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SECTIONS CONSTRUED

Section.	Reported.	Page.
10	38 C. P. R.	220
11	37 C. P. R.	121
16	2 Law Rec.	170
24	37 C. P. R.	290
24	38 C. P. R.	223
45	38 C. P. R.	100
45	2 Law Rec.	65
66	37 C. P. R.	34, 113
66	38 C. P. R. 41, 78, 162, 356,	489
66	39 C. P. R.	363
67	38 C. P. R.	57
72	37 C. P. R.	34
72	38 C. P. R.	223
73	37 C. P. R.	34, 105
74	37 C. P. R.	34
74	38 C. P. R.	396
75	37 C. P. R.	34
86	2 Law Rec.	86
191	3 Law Rec.	210
194	3 Law Rec.	119
232	38 C. P. R.	100
263	38 C. P. R.	138
265	38 C. P. R.	139, 272
315	38 C. P. R.	63
316	38 C. P. R.	63
317	38 C. P. R.	63
369	38 C. P. R.	50
375	37 C. P. R.	212
376	38 C. P. R.	264
376	39 C. P. R.	377
378	38 C. P. R.	264
379	39 C. P. R.	150
382	39 C. P. R.	166
383	37 C. P. R.	230
384	3 Law Rec.	76

Section.	Reported.	Page.
388	37 C. P. R.	93
388	39 C. P. R.	146
395	38 C. P. R.	497, 511
396	37 C. P. R.	230
399	38 C. P. R.	293
413	38 C. P. R.	497
414	37 C. P. R.	230
414	39 C. P. R.	283
417	38 C. P. R.	223, 246
417	2 Law Rec.	154
418	2 Law Rec.	154
421	38 C. P. R.	223
421	3 Law Rec.	127
426	3 Law Rec.	21
428	3 Law Rec.	21
432	1 Law Rec.	121
432	38 C. P. R.	99
435	38 C. P. R.	379
437	3 Law Rec.	76
438	3 Law Rec.	76
438	39 C. P. R.	317
442	3 Law Rec.	76
445	38 C. P. R.	381
446	39 C. P. R.	357
447	37 C. P. R.	195, 280
448	38 C. P. R.	476
449	3 Law Rec.	110
452	38 C. P. R.	459
452	2 Law Rec.	71
458	38 C. P. R.	130
458	1 Law Rec.	107
461	38 C. P. R.	233
461	1 Law Rec.	235
467	1 Law Rec.	107
480	38 C. P. R.	78
481	39 C. P. R.	162
481	2 Law Rec.	196
483	38 C. P. R.	72, 371

Section.	Reported.	Page.
483	3 Law Rec.	8
484	37 C. P. R.	368
484	38 C. P. R. . . 72, 145, 361, 403	
484	2 Law Rec.	38
484	3 Law Rec.	99, 151
488	38 C. P. R.	29, 83, 107
488	39 C. P. R.	201
488	2 Law Rec.	69
488	3 Law Rec.	61
492	38 C. P. R.	476
493	3 Law Rec.	61
494	37 C. P. R.	131
494	3 Law Rec.	102
495	37 C. P. R.	131
496	3 Law Rec.	111
497	38 C. P. R.	402
498	38 C. P. R.	29
499	37 C. P. R.	235
499	38 C. P. R.	29
500	39 C. P. R.	251
501	37 C. P. R.	131
501	38 C. P. R.	216, 370
501	39 C. P. R.	192
501	1 Law Rec.	109
501	3 Law Rec.	75, 111
505	39 C. P. R.	373
507	39 C. P. R.	251
508	1 Law Rec.	114
511	39 C. P. R.	176
516	38 C. P. R.	51
516	3 Law Rec.	136
520	38 C. P. R.	223
521	37 C. P. R.	359
521	1 Law Rec.	117
522	3 Law Rec.	102
523	38 C. P. R.	230
523	39 C. P. R.	378
525	37 C. P. R.	181

Section.	Reported.	Page.
525	38 C. P. R.	384
525	1 Law Rec.	201, 234
526	37 C. P. R.	181
526	1 Law Rec.	234
531	38 C. P. R.	59
531	39 C. P. R.	241
532	1 Law Rec.	72
533	39 C. P. R.	283
534	1 Law Rec.	109, 249
542	37 C. P. R.	78
542	38 C. P. R. ...	230, 426, 447
542	1 Law Rec.	45, 163, 255
542	3 Law Rec.	73
543	37 C. P. R.	78
543	38 C. P. R.	231
544	37 C. P. R.	78
544	38 C. P. R.	113
544	3 Law Rec.	223
545	38 C. P. R.	375
545	39 C. P. R.	201
545	2 Law Rec.	101
546	37 C. P. R.	188
546	39 C. P. R.	162, 201
549	38 C. P. R.	191, 366
549	1 Law Rec.	36, 252
550	38 C. P. R.	193
550	2 Law Rec.	49
559	2 Law Rec.	1
566	38 C. P. R.	223
568	2 Law Rec.	102
603	37 C. P. R.	56, 250
603	38 C. P. R.	494
603	1 Law Rec.	150, 188
603	2 Law Rec.	102
604	37 C. P. R.	56, 250
604	1 Law Rec.	188
629	38 C. P. R.	37
635	38 C. P. R.	271

Section.	Reported.	Page.
635	39 C. P. R.	347
636	38 C. P. R.	103, 270
636	3 Law Rec.	140, 209
638	3 Law Rec.	209
641	38 C. P. R.	223
641	1 Law Rec.	5
641	3 Law Rec.	190
645	1 Law Rec.	217
649	1 Law Rec.	93
649	2 Law Rec.	25
650	1 Law Rec.	201
651	1 Law Rec.	200
654	1 Law Rec.	197
657	1 Law Rec.	201
671	3 Law Rec.	95
683	1 Law Rec.	8
687	37 C. P. R.	183
688	37 C. P. R.	183
709	37 C. P. R.	183
719	1 Law Rec.	149
721	1 Law Rec.	217
722	1 Law Rec.	217
723	37 C. P. R.	146, 297
723	38 C. P. R.	486, 459
723	1 Law Rec.	29, 259
723	2 Law Rec.	176, 219
723	3 Law Rec.	143
724	37 C. P. R.	311
732	1 Law Rec.	132
734	37 C. P. R.	82
736	38 C. P. R.	433
738	2 Law Rec.	66
757	3 Law Rec.	189
758	38 C. P. R.	444
759	38 C. P. R.	444
760	37 C. P. R.	78
772	1 Law Rec.	9
779	37 C. P. R.	146

Section.	Reported.	Page.
779	38 C. P. R.	231
779	2 Law Rec.	131, 151
780	3 Law Rec.	135
783	2 Law Rec.	89
791	38 C. P. R.	257
791	39 C. P. R.	249
791	1 Law Rec.	42, 98
791	3 Law Rec.	134
793	38 C. P. R.	258
793	1 Law Rec.	42, 98, 107
793	3 Law Rec.	134
794	1 Law Rec.	44
798	38 C. P. R.	447
803	2 Law Rec.	193
803	3 Law Rec.	30
811	1 Law Rec.	51
812	38 C. P. R.	355
814	1 Law Rec.	72
817	3 Law Rec.	64
820	2 Law Rec.	89
820	1 Law Rec.	152
822	37 C. P. R.	315
829	37 C. P. R. . 51, 86, 209,	223
829	38 C. P. R.	293, 297
829	39 C. P. R.	171
829	2 Law Rec.	181
829	3 Law Rec.	58
834	37 C. P. R.	165
834	38 C. P. R.	135, 199
834	39 C. P. R.	247
835	38 C. P. R.	90
836	38 C. P. R.	158, 198
844	37 C. P. R.	365
854	3 Law Rec.	4, 117
854	37 C. P. R.	290
852-854	37 C. P. R.	121
855	3 Law Rec.	204
870	38 C. P. R. ... 114, 327,	373

Section.	Reported.	Page.
870	1 Law Rec.	111
870	3 Law Rec.	30, 50
871	3 Law Rec.	29
872	38 C. P. R. ...	114, 327, 373
872	39 C. P. R.	341
872	1 Law Rec.	129
872	3 Law Rec.	24, 29, 50
873	37 C. P. R.	203, 365
873	38 C. P. R.	114, 373
873	1 Law Rec.	114, 119
873	2 Law Rec.	193, 196
873	3 Law Rec.	27, 29
881	37 C. P. R.	203
885	38 C. P. R.	93, 455
885	1 Law Rec.	243
885	3 Law Rec.	20
887	39 C. P. R.	245
888	39 C. P. R.	148
889	39 C. P. R.	245
894	39 C. P. R.	148
912	39 C. P. R.	447
914	2 Law Rec.	188
914	3 Law Rec.	117
915	3 Law Rec.	117
915	2 Law Rec.	66
920	3 Law Rec.	117
968	38 C. P. R.	252
970	38 C. P. R.	252
974	1 Law Rec.	126
977	1 Law Rec.	99, 244
977	2 Law Rec.	18
982	39 C. P. R.	338
982	3 Law Rec.	2
983	39 C. P. R.	338
983	1 Law Rec.	136
983	2 Law Rec.	74
984	39 C. P. R.	338
984	2 Law Rec.	74

Section.	Reported.	Page.
987	38 C. P. R.	64
987	39 C. P. R.	345
992	37 C. P. R.	380
994	2 Law Rec.	117
997	37 C. P. R.	206
997	38 C. P. R.	301
999	37 C. P. R.	350
999	38 C. P. R.	88
999	1 Law Rec.	95, 102, 241
999	2 Law Rec.	213
1002	38 C. P. R.	272
1005	38 C. P. R.	272
1011	3 Law Rec.	67
1013	38 C. P. R.	259, 352
1021	37 C. P. R.	152
1093	1 Law Rec.	118
1189	37 C. P. R.	389
1204	37 C. P. R.	359
1205	38 C. P. R.	278
1207	2 Law Rec.	6
1209	37 C. P. R.	152
1216	38 C. P. R.	278
1217	38 C. P. R.	387
1220	38 C. P. R.	278
1221	38 C. P. R.	419
1222	38 C. P. R.	419
1229	1 Law Rec.	68
1236	37 C. P. R.	152
1236	38 C. P. R.	419
1241	38 C. P. R.	256
1268	37 C. P. R.	317
1274	37 C. P. R.	141
1275	37 C. P. R.	141
1279	39 C. P. R.	273
1294	3 Law Rec.	204
1300	1 Law Rec.	207
1303	37 C. P. R.	299
1303	38 C. P. R.	354

Section.	Reported.	Page.
1303	1 Law Rec.	207
1308	38 C. P. R.	355
1310	38 C. P. R.	422
1316	38 C. P. R.	282
1323	38 C. P. R.	210
1326	38 C. P. R.	422
1327	2 Law Rec.	6
1333	37 C. P. R.	253
1335	38 C. P. R.	354
1338	39 C. P. R.	261
1347	1 Law Rec.	241
1351	2 Law Rec.	117
1351	3 Law Rec.	105
1352	3 Law Rec.	105
1352	37 C. P. R.	303
1364	3 Law Rec.	120
1366	3 Law Rec.	141
1369	2 Law Rec.	70
1371	3 Law Rec.	78
1377	1 Law Rec.	198
1377	3 Law Rec.	120
1380	37 C. P. R.	303
1391	38 C. P. R.	25, 75
1391	2 Law Rec.	65
1393	38 C. P. R. ...	172, 187, 215
1421	3 Law Rec.	151
1424	1 Law Rec.	37
1426	2 Law Rec.	111
1437	38 C. P. R.	193
1487	38 C. P. R.	193
1531	37 C. P. R.	335
1544	3 Law Rec.	85
1562	3 Law Rec.	25
1576	1 Law Rec.	222
1581	1 Law Rec.	123
1624	3 Law Rec.	146
1625	3 Law Rec.	52
1627	37 C. P. R.	1

Section.	Reported.	Page.
1628	37 C. P. R.	1
1628	3 Law Rec.	92
1629	38 C. P. R.	407
1638	38 C. P. R.	252
1638	3 Law Rec.	81
1639	3 Law Rec.	81
1641	38 C. P. R.	253
1642	38 C. P. R.	252
1645	38 C. P. R.	253
1647	1 Law Rec.	94
1658	3 Law Rec.	92
1669	38 C. P. R.	437
1670	2 Law Rec.	217
1670	39 C. P. R.	315
1670	3 Law Rec.	126, 212
1671	37 C. P. R.	131
1671	2 Law Rec.	217
1672	2 Law Rec.	217
1672	37 C. P. R.	131
1673	2 Law Rec.	217
1674	2 Law Rec.	217
1674	3 Law Rec.	47, 54
1695	3 Law Rec.	215
1743	2 Law Rec.	211
1743	28 C. P. R.	330
1751	3 Law Rec.	204
1757	38 C. P. R.	170
1761	1 Law Rec.	241
1769	1 Law Rec.	254
1771	3 Law Rec.	204
1772	39 C. P. R.	168
1772	1 Law Rec.	219
1773	38 C. P. R.	256
1773	1 Law Rec.	219
1773	3 Law Rec.	3, 203
1775	1 Law Rec.	103
1775	3 Law Rec.	65, 79
1778	3 Law Rec.	31

Section.	Reported.	Page.
1778	1 Law Rec.	199
1780	38 C. P. R.	386
1781	37 C. P. R.	322
1781	39 C. P. R.	351
1782	37 C. P. R.	322
1815	2 Law Rec.	125
1819	37 C. P. R.	309
1822	2 Law Rec.	210
1843	38 C. P. R.	270
1843	1 Law Rec.	139
1852	39 C. P. R.	347
1854	38 C. P. R.	270
1865	1 Law Rec.	141
1871	3 Law Rec.	57, 78
1902	37 C. P. R.	264
1903	37 C. P. R.	257
1910	37 C. P. R.	102, 158
1913	37 C. P. R.	93, 287
1913	38 C. P. R.	264, 386
1913	2 Law Rec.	43
1919	39 C. P. R.	296
1919	2 Law Rec.	191
1932-1944	37 C. P. R.	93
1932	1 Law Rec.	62
1937	38 C. P. R.	259, 386
1938	38 C. P. R.	259
1939	38 C. P. R.	259
1940	38 C. P. R.	264
1942	39 C. P. R.	156
1946	39 C. P. R.	155
1948	39 C. P. R.	178
1948	1 Law Rec.	162
1950	1 Law Rec.	162
1986	39 C. P. R.	178
2015	39 C. P. R.	207
2019	39 C. P. R.	207
2035	37 C. P. R.	294
2070	2 Law Rec.	73

Section.	Reported.	Page.
2071	1 Law Rec.	211
2083	1 Law Rec.	157
2092	37 C. P. R.	219
2097	39 C. P. R.	258
2231-2265	37 C. P. R.	84
2231	38 C. P. R.	173
2232	38 C. P. R.	358
2235	39 C. P. R.	134
2244	3 Law Rec.	128
2262	1 Law Rec.	65
2264	3 Law Rec.	3
2269	3 Law Rec.	3
2284	37 C. P. R.	121
2285	1 Law Rec.	8, 137
2286	1 Law Rec.	6, 137, 205
2286	2 Law Rec.	143
2323a	1 Law Rec.	92
2325	1 Law Rec.	13
2335	37 C. P. R.	165
2338	37 C. P. R.	9
2346	38 C. P. R.	429
2354	38 C. P. R.	429
2373	38 C. P. R.	244
2374	38 C. P. R.	244
2375	38 C. P. R.	244
2410	1 Law Rec.	91
2433	3 Law Rec.	78
2434	37 C. P. R.	290
2435	1 Law Rec.	198, 203
2436	2 Law Rec.	54
2441	2 Law Rec.	54
2442	2 Law Rec.	54
2443	1 Law Rec.	238
2444	37 C. P. R.	290
2452	2 Law Rec.	54
2446	2 Law Rec.	140
2458	38 C. P. R.	345
2468	38 C. P. R.	363

Section.	Reported.	Page.
2474	3 Law Rec.	136
2476	37 C. P. R.	177
2477	37 C. P. R.	177
2481	37 C. P. R.	270
2481	38 C. P. R.	301, 315
2481	39 C. P. R.	310
2511	1 Law Rec.	21
2514	37 C. P. R.	270
2514	1 Law Rec.	83
2554	2 Law Rec.	70
2555	2 Law Rec.	143
2569	38 C. P. R.	308
2572	38 C. P. R.	308
2575	38 C. P. R.	254
2578	38 C. P. R.	212
2579	38 C. P. R.	212
2580	38 C. P. R.	212
2580	38 C. P. R.	212
2581	38 C. P. R.	353
2585	3 Law Rec.	165
2586	38 C. P. R.	288
2587	38 C. P. R.	288
2588	1 Law Rec.	161
2588	3 Law Rec.	165
2597	38 C. P. R.	355
2603	2 Law Rec.	81
2606	39 C. P. R.	146
2606	1 Law Rec.	20, 21
2606	2 Law Rec.	81
2611	3 Law Rec.	149
2613	38 C. P. R.	322
2614	38 C. P. R.	315
2615	38 C. P. R.	305
2617	38 C. P. R.	310
2618	38 C. P. R.	305
2619	38 C. P. R.	305
2621	1 Law Rec.	141
2623	3 Law Rec.	146

Section.	Reported.	Page.
2624	38 C. P. R.	308
2624	3 Law Rec.	146
2626	38 C. P. R.	308
2627	38 C. P. R.	308
2636	2 Law Rec.	152
2643	38 C. P. R.	462
2643	3 Law Rec.	201
2644	38 C. P. R.	462
2647	38 C. P. R.	308, 315
2653a	37 C. P. R.	223, 274
2653a	38 C. P. R. ...	117, 209, 306
2660	3 Law Rec.	201
2661	2 Law Rec.	70
2661	3 Law Rec.	201
2662	2 Law Rec.	70
2678	2 Law Rec.	13
2685	3 Law Rec.	16
2691	1 Law Rec.	77
2692	2 Law Rec.	81
2698	1 Law Rec.	138
2700	1 Law Rec.	80
2701	1 Law Rec.	19
2707	37 C. P. R.	98
2707	1 Law Rec.	175
2707	2 Law Rec.	6, 161
2709	1 Law Rec.	175
2709	2 Law Rec.	161
2710	37 C. P. R.	98
2711	3 Law Rec.	27
2712	2 Law Rec.	165
2712	1 Law Rec.	83
2714	39 C. P. R.	183
2714	2 Law Rec.	181
2715	3 Law Rec.	27
2716	3 Law Rec.	27
2718	1 Law Rec.	140
2722	39 C. P. R.	368
2722	1 Law Rec.	82

Section.	Reported.	Page.
2722	2 Law Rec.	81, 210
2723	1 Law Rec.	20, 140
2725	1 Law Rec.	82
2726	39 C. P. R.	146
2726	1 Law Rec.	82
2727	1 Law Rec.	21, 77, 82
2727	3 Law Rec.	220
2730	37 C. P. R.	9
2730	3 Law Rec.	186
2731	37 C. P. R.	74
2732	1 Law Rec.	57
2739	2 Law Rec.	106
2743	2 Law Rec.	158
2746	1 Law Rec.	20
2749	1 Law Rec.	139, 171
2750	2 Law Rec.	121, 181
2754	1 Law Rec.	138
2754	2 Law Rec.	124
2759	2 Law Rec.	181
2760	2 Law Rec.	181
2765	2 Law Rec.	181
2769	2 Law Rec.	181
2802	37 C. P. R.	9
2808	37 C. P. R.	270
2817	3 Law Rec.	136
2832	2 Law Rec.	33
2838	1 Law Rec.	123
2869	39 C. P. R.	313
2944	38 C. P. R.	343
2965	38 C. P. R.	343
3051	1 Law Rec.	29
3228	37 C. P. R.	82, 372
3228	38 C. P. R.	433
3228	1 Law Rec.	107
3229	38 C. P. R.	433
3229	39 C. P. R.	140
3230	2 Law Rec.	66
3240	38 C. P. R.	82

Section.	Reported.	Page.
3240	3 Law Rec.	46
3247	38 C. P. R.	227
3252	39 C. P. R.	141
3253	37 C. P. R.	191
3253	38 C. P. R.	465
3253	1 Law Rec.	113, 127
3267	1 Law Rec.	103
3268	38 C. P. R. 70, 360, 432,	492
3268	1 Law Rec.	148
3269	38 C. P. R.	492
3269	1 Law Rec.	148
3271	38 C. P. R.	70, 360, 432
3271	3 Law Rec.	53
3278	1 Law Rec.	246
3296	3 Law Rec.	192
3311	2 Law Rec.	86
3318	37 C. P. R.	121
3320	37 C. P. R.	9
3333	38 C. P. R.	82
3333	39 C. P. R.	146
3333	1 Law Rec.	157
3334	38 C. P. R.	82
3343	37 C. P. R.	148
3343	3 Law Rec.	190
3345	38 C. P. R.	72
3347	37 C. P. R.	311
3347	38 C. P. R.	366
3372	3 Law Rec.	46
3399	38 C. P. R.	64
3411	39 C. P. R.	308
3417	3 Law Rec.	42, 54

A TABLE OF CASES

REPORTED IN

New York Civil Procedure Reports

8 VOLUMES

AND

New York Law Record

2 VOLUMES



CASES REPORTED

A

	Page
Aaron v. Foster, 11 C. P. R.....	325
Abbott v. Abbott, 2 Law Rec.....	57
Abbott, People ex rel. Wallace v. 13 C. P. R....	101, 163
Abbey, Metropolitan Concert Garden Co., v. 5 C. P. R.	26
Abeel v. Anderson, 9 C. P. R.....	274
Abeel, Humbert v. 7 C. P. R.....	417
Abel v. Bradner, 15 C. P. R.....	241
Abel, Knight v. 15 C. P. R.....	137
Abeles v. Benotiel, 3 Law Rec.....	128
Abendroth v. Durant, 9 C. P. R.....	446
Abendroth, Durant, v. 8 C. P. R.....	87
Abendroth, Durant, v. 13 C. P. R.....	434
Abendroth, Durant, v. 15 C. P. R.....	36
Abendroth v. Manhattan R. R. Co., 9 C. P. R....	406
Abendroth, VanDolsen, v. 8 C. P. R.....	87
Ablowich, Matter of, 39 C. P. R.....	183
Abrams v. Van Brunt St. & Erie Basin R. R. Co., 13 C. P. R.....	402
Acardo v. New York Contr. & T. Co., 38 C. P. R.	374
Acken v. Coughlin, 34 C. P. R.....	200
Ackerly & Gerard Co. v. Partz, 20 C. P. R.....	382
Ackerman, Gilbert v. 29 C. P. R.....	93
Ackerman v. O'Gorman, 17 C. P. R.....	275
Adams, In re., 28 C. P. R.....	12
Adams, People ex rel. v. Westbrook, 2 C. P. R..	180
Adams, People ex rel. Winans v. 20 C. P. R....	195
Adams, People ex rel. Winans v. 21 C. P. R....	159
Adams, Balcom v. 15 C. P. R.....	198
Adams v. Bowe, 3 C. P. R.....	191
Adams v. The City of Utica, 6 C. P. R.....	294
Adams, Collins v. 15 C. P. R.....	384
Adams, Fusco v. 19 C. P. R.....	48

	Page
Adams, Lederer v. 19 C. P. R.....	294
Adams v. Lamson Consolidated Store Service Co., 20 C. P. R.....	152
Adams, Lush v. 10 C. P. R.....	60
Adams v. Olin, 21 C. P. R.....	227
Adams v. Roberts, 1 C. P. R.....	204
Adams, Thorp v. 18 C. P. R.....	279
Adams, Thorp v. 19 C. P. R.....	351
Adams v. Stevens, 23 C. P. R.....	356
Adams, Tator v. 19 C. P. R.....	114
Adler, Ebling Brewing Co. v. 39 C. P. R.....	118
Adler v. Order of American Fraternal Circle of Baltimore City, 22 C. P. R.....	336
Adost v. Descen, 13 C. P. R.....	85
Aeschelman, Haan & Co. v. 3 Law Rec.....	7
Agar v. Haines, 15 C. P. R.....	6
Agar v. Tibbetts, 18 C. P. R.....	338
Agnew v. Brooklyn City R. R. Co., 13 C. P. R.	25
Agricultural Company v. Smith, 35 C. P. R....	338
Ahner v. New York, New Haven & Hartford R. Co., 20 C. P. R.....	318
Aiken, Clegg v. 8 C. P. R.....	249
Aiken, Wallung v. 17 C. P. R.....	318
Aitkin, Tilden v. 29 C. P. R.....	28
Aitman v. Harsell, 5 C. P. R.....	93
Alaske Unterstuetzungs Verein v. Wall, 29 C. P. R.....	3
Albers, Dodge v. 39 C. P. R.....	89
Albemarle Fertilizing Co., Bradley v. 2 C. P. R.	50
Albert Palmer Co. v. Van Orden, 4 C. P. R....	44
Albro, Martin v. 2 C. P. R.....	70
Albright v. Kempton, 4 C. P. R.....	16
Alburtis, Collis v. 9 C. P. R.....	80
Alden, Carswell v. 12 C. P. R.....	137
Alden, People v. 13 C. P. R.....	317
Aldine Publishing Co., Simon v. 11 C. P. R....	267
Aldine Publishing Co., Simon v. 12 C. P. R....	290
Aldinger v. Pugh, 19 C. P. R.....	91

	Page
Alexander, Goodman v. 31 C. P. R.	342
Alexander, Luce v. 4 C. P. R.	428
Alexander, Maine Product Co. v. 37 C. P. R.	250
Alexandre, Matter of, 25 C. P. R.	42
Alfson v. The Brush Company, 35 C. P. R.	104
Alker v. Rhodes, 33 C. P. R.	122
Allen v. Bagnell, 12 C. P. R.	426
Allen, Benjamin v. 7 O. P. R.	202
Allen, Buffalo & Grand Island Co. v. 12 C. P. R.	64
Allen, Estate of, 7 C. P. R.	159
Allen, Guinan v. 29 C. P. R.	277
Allen, Hull v. 4 C. P. R.	300
Allen, Mallary v. 7 C. P. R.	287
Allen, People ex rel. v. Murray, 23 C. P. R. 53, 71	71
Allen v. Swan, 6 C. P. R.	56
Allen v. Warton, 20 C. P. R.	121
Allison v. Snider Preserve Co., 26 C. P. R.	298
Almy v. Thurber, 3 O. P. R.	351
Alport, Travest v. 13 C. P. R.	167
Althause, Matter of, 32 C. P. R.	158
Altman, Fleet v. 3 Law Rec.	120
Altman, Schneider v. 8 C. P. R.	242
Alward v. Alward, 15 C. P. R.	151
Amber, Cramer v. 16 C. P. R.	44
Amberg, Farrell v. 23 C. P. R.	434
Ambrose v. Steinbacht, 1 Law Rec.	127
American Beer & Ale Bottling Co., Schlegel v. 2 C. P. R.	393
American Boiler Co., Fouthans v. 3 Law Rec.	48
American Chemical Co., Robinson v. 9 C. P. R. ..	78
American Credit Co. v. Bondy, 2 Law Rec.	41
American Distributing Co. v. Distilling & Cattle Feeding Co., 24 C. P. R.	245
American Enc. Tiling Co. v. Harman, 1 Law Rec.	95
American Exchange Natl. Bank, First National Bank v. 30 C. P. R.	298
American Fire Ins. Co. of Phila, Clements v. 33 C. P. R.	1

	Page
American Grocery Co., Jones v. 2 Law Rec.....	137
American Grocery Co., Reedy Elevator Co. v 2 Law Rec.	219
American Insulator Co. v. Bankers' & Merchants' Telegraph Co. 7 C. P. R.	443
American Ins. Co., Mayo v. 17 C. P. R.	43
American Lighting Co. v. Sewell Car Heating Co. 17 C. P. R.	386
American Loan & Trust Co., Farrington v. 18 C. P. R.	363
American Lucol Co. v. Broadwell, 1 Law Rec....	70
American Mills Co. v. Schnitzer, 7 C. P. R.	150
American Mortgage Co. v. Dewey, 35 C. P. R....	48
American News Co., Howke v., 24 C. P. R.	255
American Opera Co., Parry v., 12 C. P. R.	194
American Opera Co., Richards v. 12 C. P. R. ...	194
American Ormonde C. Co. v. Cohn, 1 Law Rec....	42
American Surety Co. v. Crow, 1 Law Rec.	63
American Surety Co., Dollard v. 39 C. P. R.	176
American Surety Co., Dunne v 29 C. P. R.....	59
American Steamship Co., Gusstaf, v. 4 C. P. R. 243	
American Surety Co., Sachs v. 33 C. P. R.	41
American Swan Boat Co., Dolliver v. 31 C. P. R.	94
American Telephone & Telegraph Co., Barrett v. 18 C. P. R.	363
American Thread Co. v. Feitner, 30 C. P. R.	398
American Wood Board Co., Spaulding v. 25 C. P. R.	376
Amy v. Manning, 17 C. P. R.	175
Amy v. Manning, 22 C. P. R.	94
Anaconda Copper Mining Co., Lewisohn v. 27 C. P. R.	257
Anathan, Cohn v., 16 C. P. R.	129
Anderson, Abeel v. 9 C. P. R.	274
Anderson v. Appleton, 16 C. P. R.	199
Anderson v. Brackeleer, 28 C. P. R.	306
Anderson v. Daly, 29 C. P. R.	257
Anderson v. Hedden & Sons Co., 38 C. P. R....	140

	Page
Anderson, Lyman v., 3 Law Rec.	69
Anderson, Mercantile Bank v. 2 Law Rec.	5
Anderson v. Porter, 23 C. P. R.	297
Anderson v. Shutts, 37 C. P. R.	141
Andrews, DeForest v. 29 C. P. R.	250
Andrews, Graham v. 24 C. P. R.	263
Andrews, Hagerty v. 4 C. P. R.	323
Andrews, Hardie v. 13 C. P. R.	413
Andrews v. Keene, 4 C. P. R.	330
Andrews, Matter of, 30 C. P. R.	377
Andrew v. Reiners, 37 C. P. R.	51
Andrews v. Schnitzler, 2 C. P. R.	18
Andrews v. Snyder, 6 C. P. R.	333
Andrews, St. John v. 34 C. P. R.	279
Andrews v. Townshend, 2 C. P. R.	76
Andrews, Wykoff v. 5 C. P. R.	410
Anger v. Herter, 3 Law Rec.	92
Angle, Howarth v. 30 C. P. R.	303
Angle v. Kaufman, 4 C. P. R.	201
Anonymous, 14 C. P. R.	38
Anonymous v. Anonymous, 1 Law Rec.	241
Ansonia Brass & Copper Co. v. Conner, 6 C. P. R.	173
Ansonia Brass & Copper Co. v. Connor, 7 C. P. R.	248
Ansonia Brass & Copper Co. v. Connor, 11 C. P. R.	371
Ansonia Brass & Copper Co. v. Conner, 3 C. P. R.	88
Anthon v. Bachelor, 16 C. P. R.	304
Anthony & Co. v. Fox, 31 C. P. R.	136
Anthony, E. & H. T. & Co., in re 29 C. P. R.	353
Anthony v. Wood, 6 C. P. R.	164
Antony v. Dickel, 29 C. P. R.	219
Antony v. Runk, 3 Law Rec.	30
Apple, Lewisohn, v. 12 C. P. R.	274
Appleton, Anderson v. 16 C. P. R.	199
Appleton, Badger, v. 12 C. P. R.	93
Appley in re, 24 C. P. R.	386
April v. Baird, 28 C. P. R.	29
Apsley v. Wood, 6 C. P. R.	178
Arbogast, Estate of Philip, 9 C. P. R.	231

	Page
Argensinger v. Lever, 17 C. P. R.	352
Argrave v. Blackman, 28 C. P. R.	362
Arguero, Hyatt v. 14 C. P. R.	286
Arkenburgh, Dunn, Sheriff v. 31 C. P. R.	67
Arkenburgh v. Wiggins, 26 C. P. R.	214
Armfield, Wurster v. 34 C. P. R.	167
Armory Board, Matter of, 30 C. P. R.	123
Armour, People ex rel. v. 27 C. P. R.	25
Armour, Boston National Bank v. 16 C. P. R. ...	147
Armsby Co., Delafield v. 32 C. P. R.	132
Armstrong Mfg. Co. v. Ferris, 16 C. P. R.	265
Armstrong v. Phillips, 20 C. P. R.	399
Arnold, in re, 37 C. P. R.	177
Arnold v. Oliver, 2 C. P. R.	457
Arnot v. Nevins, 30 C. P. R.	239
Arnow v. Harlem R. & P. C. R. Co., 3 Law Rec. ..	46
Arnoux v. Ward, 1 Law Rec.	76
Arnow, McSorley v. 3 Law Rec.	25
Arrow Steamship Co. v. Bennett, 23 C. P. R.	234
Arteaga v. Flack, 2 C. P. R.	152
Arthur, Kennedy v. 18 C. P. R.	390
Asch, Matter of, 33 C. P. R.	177
Ascheim v. Kalisky, 3 Law Rec.	143
Aschpurwis, Wichman v. 14 C. P. R.	88
Ash v. Heine, 3 Law Rec.	75
Ash v. Purnell, 19 C. P. R.	234
Ashenden, Seymour v. 13 C. P. R.	255
Ashley v. Lamb, 15 C. P. R.	211
Ashman, Weiss v. 24 C. P. R.	268
Ashmore, Matter of, 35 C. P. R.	268
Asiel, Smith v. 3 Law Rec.	24
Assessors of Town of Herkimer, People ex rel, Herkimer & Mohawk R. R. Co. v. 6 C. P. R.	297
Associated Lace Makers Co. v. Maloy, 1 Law Rec.	101
Associated Press, Press Publishing Co. v. 29 C. P. R.	203
Astrand v. Brooklyn Heights Railroad Co. 28 C. P. R.	113

	Page
Astarita, Northridge, 30 C. P. R.	291
Atlas Refining Co. v. Smith, 31 C. P. R.	12
Atlas Iron Const. Co., Matter of, 1 Law Rec...	215
Atlantic & Gulf Stream Transportation Co. v. Doltz, 3 C. P. R.	162
Attleboro National Bank v. Wendell, 22 C. P. R.	225
Atlantic Trust Co. v. Bracken, 3 Law Rec.	158
Attica Water Co., Thompson v. 1 C. P. R.	368
Attorney-General v. Continental Life Ins. Co., 4 C. P. R.	214
Atwell, Douglass v. 3 C. P. R.	90
Atwood, Hatfield v. 15 C. P. R.	330
Augner v. The Mayor, etc. 26 C. P. R.	165
Auld, Townshend v. 24 C. P. R.	181
Aultman Taylor Co. v. Syme, 30 C. P. R.	334
Aultman & Taylor Co. v. Syme, 26 C. P. R.	219
Austin v. Brynes, 12 C. P. R.	332
Austin, Dickie v. 4 C. P. R.	123
Austin, Receiver v Excelsior S. P. Co., 1 Law Rec.	42
Austin, Receiver v. Gen. S. Mining Co., 1 Law Rec.	34
Austin, Receiver v. Harvard R. Co., 1 Law Rec.	57
Austin, Receiver v. Piza, 1 Law Rec.	155
Austin, Receiver v. Security B. L. Ins. Co., 1 Law Rec.	50
Austin, Receiver v. Smith, 1 Law Rec.	215
Austin v. Varian, 1 Law Rec.	135
Auto Mart, Tynan v. 39 C. P. R.	17
Averill v. Hurd, 15 C. P. R.	162
Averill, Krause v. 4 C. P. R.	410
Avery v. Avery, 23 C. P. R.	204
Avery v. Avery, 38 C. P. R.	269
Avery v. Avery, 39 C. P. R.	347
Avery v. Lee, 38 C. P. R.	90
Avery v. Starbuck, 16 C. P. R.	393
Ayers v. Village of Hammondsport, 13 C. P. R.	236

B

	Page
Babbitt v. Crampton, 1 C. P. R.	169
Bache v. Matuska and Craig Furniture Co., 7 C. P. R.	86
Bachelor, Anthon v. 16 C. P. R.	304
Bachman, Chorrman v. 39 C. P. R.	166
Bachman v. Harrington, 37 C. P. R.	56
Bachman, Kuntz v. 1 C. P. R.	281
Backer, Estate of, 2 Law Rec.	13
Bacon, Hallock v. 21 C. P. R.	255
Bacon, People ex rel, Bachelor v. 29 C. P. R.	111
Badger, Appleton v. 12 C. P. R.	93
Badger, Gilroy v. 29 C. P. R.	396
Badger v. Power, 2 Law Rec.	132
Badger v. Woodworth, 1 Law Rec.	223
Baer, Gellar v. 12 C. P. R.	433
Baer, McElroy v. 9 C. P. R.	133
Bagley v. Jennings, 19 C. P. R.	199
Bagnell, Allen v. 12 C. P. R.	426
Bailey, in re, 4 C. P. R.	140
Bailey, in re, 5 C. P. R.	253
Bailey v. Kincaid, 19 C. P. R.	232
Bailey, McAllister v. 14 C. P. R.	401
Bailey v. Sargent Granite Co., 23 C. P. R.	319
Baine v. City of Rochester, 1 C. P. R.	269
Baird, April v. 28 C. P. R.	29
Baird, Estate of, 11 C. P. R.	164
Baird, Lidgerwood Mfg. Co. v. 6 C. P. R.	54
Baird, Sloane v. 30 C. P. R.	361
Baker, Gunning v. 3 Law Rec.	24
Baker, Clay v. 11 C. P. R.	1
Baker v. Hatfield, 3 C. P. R.	303
Baldwin, Matter of, 25 C. P. R.	6
Baldwin v. Baldwin, 23 C. P. R.	287 note
Baldwin, Clason v. 20 C. P. R.	291
Baldwin, Clason v. 21 C. P. R.	383
Baldwin v. Dowling, 5 C. P. R.	300

	Page
Baldwin, People ex rel v. Goldfogle, 23 C. P. R.	417
Baldwin, Peck v. 19 C. P. R.	403
Baldwin v. Perry, 1 C. P. R.	32, 118
Baldwin v. Rice, 35 C. P. R.	127
Baldwin v. Rood, 15 C. P. R.	56
Balcom v. Adams, 15 C. P. R.	198
Ball v. Ball Manufacturing Co., 1 Law Rec.....	6
Ball v. Evening Post Publish Co., 12 C. P. R. ..	4
Ballard, Tyler v. 31 C. P. R.	63
Ballen ex rel v. Smith, 35 C. P. R.	325
Baltimore & O. R. Co., Ubart v. 38 C. P. R....	367
Bamberger v. Oshinsky, 26 C. P. R.	346
Bame v. Neuss, 2 C. P. R.	185
Bandman v. Jones, 17 C. P. R.	417
Bange, Terry v. 18 C. P. R.	288
Bank of Mobile v. Phoenix Ins. Co., 8 C. P. R. ..	213
Bank of Metropolis v. White, 1 Law Rec.	233
Bank of Montreal v. Gleason, 14 C. P. R.	377
Bank of North America v. Hoinsey, 13 C. P. R.	158
Bank of State of New York, Day v. 9 C. P. R....	51
Bank for Savings, Gearon, v. 6 C. P. R.	207
Banks, in re, Will of, 16 C. P. R.	89
Bankers' and Merchants' Telegraph Co., Ameri- can Insulator Co., 7 C. P. R.	443
Bankers' & Merchants' Telegraph Co., Farmers' Loan & Trust Co. v. 11 C. P. R.	307
Bannon, Mayor, etc. v. 30 C. P. R.	188
Bannerman v. Quackenbush, 7 C. P. R.	428
Bannerman v. Quackenbush, 9 C. P. R.	108
Bannigan v. Pick, 8 C. P. R.	246
Baptist T. Church v. Baptist Mission Society, 1 Law Rec.	231
Barclay v. Culver, 4 C. P. R.	365
Barclay, Wilcox Silver Plate Co. v. 14 C. P. R..	211
Barbig v. Kick, 25 C. P. R.	62, 237
Barbig v. Lipman, 2 Law Rec.	37
Bareither v. Brosche, 19 C. P. R.	446
Baremore v. Taylor, 9 C. P. R.	76

	Page
Barker v. Cunnard Steamship Co., 25 C. P. R.	109
Barker, Hodgman v. 20 C. P. R.	341
Barker, Hodgman v. 21 C. P. R.	121
Barker, National Broadway Bank v. 20 C. P. R.	338
Barker, Natl. Broadway Bank v. 21 C. P. R.	120
Barker v. Platt, 15 C. P. R.	52
Barkley v. Rennselaer & Saratoga R. R. Co., 2 C. P. R.	409
Barker v. Forti & Bertolim, 1 Law Rec.	87
Barley v. Roosa, 20 C. P. R.	113
Barnegat and Long Beach Improvement Co., Hann v. 7 C. P. R.	222
Barnard v. Onderdonk, 2 C. P. R.	294
Barnes, Estate of, 1 Law Rec.	80
Barnes, Estate of, 3 Law Rec.	220
Barnes, Estate of, 1 C. P. R.	59
Barnes v. Blake, 20 C. P. R.	17
Barnes, Carlisle v. 35 C. P. R.	140
Barnes, Conquest v. 16 C. P. R.	268
Barnes v. Gilmore, 6 C. P. R.	286
Barnes, Horton v. 23 C. P. R.	195
Barnes v. Levy, 23 C. P. R.	253
Barnes v. Meyer, 1 Law Rec.	114
Barnes v. Meyer, 25 C. P. R.	372
Barnes v. Palmer et al, 26 C. P. R.	382
Barnes v. Pacific R. R. Co., 3 Law Rec.	31
Barnes, Ramsey v. 20 C. P. R.	85
Barnes, Schenck v. 27 C. P. R.	354
Barnes, Smith v. 24 C. P. R.	49
Barentsen, Seamans v. 34 C. P. R.	178
Barnum, Carter v. 28 C. P. R.	161
Barrett, People ex rel, Choat, 18 C. P. R.	230
Barrett v. American Telephone & Telegraph Co., 18 C. P. R.	363
Barretts, Palmer & Heal Dyeing Establishment, Keeler v. 12 C. P. R.	121
Barrie v. Yorston, 28 C. P. R.	253
Barron, Crane v. 37 C. P. R.	350

	Page
Barron v. Feist, 37 C. P. R.	391
Barrowe v. Corbin, 3 Law Rec.	136
Barry v. Calder, 15 C. P. R.	14
Barry, Hunt v. 16 C. P. R.	362
Barry, Schmidt v. 21 C. P. R.	21
Barson v. Mulligan, 32 C. P. R.	251
Barth, Estate of, 3 Law Rec.	186
Bartlett v. Mugett, 23 C. P. R.	288
Bartlett, Shankland v. 15 C. P. R.	24
Bartlett v. Sutornis, 17 C. P. R.	259
Barto, McRavy v. 37 C. P. R.	173
Basch, Estate of, 24 C. P. R.	264
Bassett v. French, 27 C. P. R.	95
Bates v. Colbrook, 34 C. P. R.	10
Bates v. Eagleton Mfg. Co., 10 C. P. R.	218
Bates v. Gorman, 8 C. P. R.	180
Bates, Knorr v. 24 C. P. R.	377
Bates v. Norris, 13 C. P. R.	395
Bates v. Pimstein, 7 C. P. R.	300
Bates v. Plonsky, 2 C. P. R.	389
Batchelder v. Mugett, 23 C. P. R.	178
Batt, Estate of, 1 Law Rec.	80
Batten, Reed v. 17 C. P. R.	272
Battle, Estate of, 13 C. P. R.	27
Baucus, Brower v. 20 C. P. R.	389
Baumgarten, Roberts v. 18 C. P. R.	161
Baur v. Betz, 7 C. P. R.	233
Bauer, in re, 3 C. P. R.	39
Bauer, Citizens Savings Bank v. 14 C. P. R.	340
Bauer v. Hawes, 38 C. P. R.	273
Bauer, Minto v. 17 C. P. R.	314
Bauer, People ex rel. West Shore Traction Co. v. 39 C. P. R.	258
Bauer v. Schevitch, 11 C. P. R.	433
Bauerdorf v. Bayer, 3 Law Rec.	71
Bayer, Bauerdorf v., 3 Law Rec.	71
Baxter v. Connor, 39 C. P. R.	363
Baxter, Hitchman v. 5 C. P. R.	226

	Page
Baxter v. Drake, 1 C. P. R.	226
Baxter, Droege, v. 32 C. P. R.	354
Bayles, Harrington v. 33 C. P. R.	363
Beach, Eggleston v. 19 C. P. R.	288
Beadleston v. Beadleston, 9 C. P. R.	440
Beal v. Union Paper Box Co., 4 C. P. R.	19
Bean v. Tonnelle, 1 C. P. R.	33
Beard v. Covill, 38 C. P. R.	24
Beard, Thorn v. 23 C. P. R.	189
Beardslee v. Ingraham, 35 C. P. R.	55
Beardslee v. McDermot, 35 C. P. R.	180
Beaumont, Diecks' Pharmaceutical Extract Co., v. 5 C. P. R.	274
Bechtell v. Manhattan R. R., 2 Law Rec.	105
Becker, Estate of, 1 Law Rec.	22
Becker v. Becker, 1 Law Rec.	166
Becker v. Bevins, 38 C. P. R.	103
Becker v. McCrea, 39 C. P. R.	150
Becker v. Koch, 12 C. P. R.	75
Beckley v. Chamberlain, 22 C. P. R.	338
Beebe v. Nassau Show Case Co., 29 C. P. R. ...	392
Beebe v. Parker, 16 C. P. R.	320
Beecher, Hooper v. 20 C. P. R.	226
Beecher, N. Y. Board of Fire Underwriters v. 24 C. P. R.	307
Beecher v. Schiefflin, 4 C. P. R.	230
Beer v. Benner, 2 C. P. R.	362
Beer v. Simpson, 22 C. P. R.	351
Beere, Hommeyer v. 13 C. P. R.	169
Behrens, St. Michael's Church v. 10 C. P. R....	181
Belcha, Poole v. 22 C. P. R.	67
Belden v. Belden, 39 C. P. R.	14
Beldin, Fagan v. 3 Law Rec.	222
Belding, Stieglitz v. 26 C. P. R.	311
Beldon, Moody v. 21 C. P. R.	84
Bell, Estate of William C., 23 C. P. R.	128
Bell v. Good, 22 C. P. R.	356
Bell v. Karsch Brewing Co., 39 C. P. R.	134

	Page
Bell v. Lesbini, 4 C. P. R.	367
Bell v. Merrifield, 14 C. P. R.	146
Bell Realty Co., Rosenthal v. 39 C. P. R.	131
Bell v. Supreme Council of American Legion of Honor, 29 C. P. R.	332
Bell Telephone Co. v. Parker, 38 C. P. R.	122
Bell, Townsend v. 32 C. P. R.	111
Bellamy, Willis v. 11 C. P. R.	104
Belmont, Olifiers v. 24 C. P. R.	408
Belmont v. Siqua Iron Co., 1 Law Rec.	194
Belsky, Wokal v. 31 C. P. R.	130
Bender's Will, in re, 35 C. P. R.	314
Bender v. Bork, 38 C. P. R.	113
Bender v. Paulus, 35 C. P. R.	124
Benecke, Hartford National Bank v. 26 C. P. R.	226
Benedict v. Cobb, 17 C. P. R.	245
Benedict, Davis v. 20 C. P. R.	267
Benedict v. Ferguson, 1 Law Rec.	228
Bengtson v. Thingvalla Steamship Co., 3 C. P. R.	263
Bengtson v. Thingvalla Steamship Co., 4 C. P. R.	260
Benjamin v. Ver Nooy, 29 C. P. R.	120
Benner, Beer v. 2 C. P. R.	362
Bennett, Arrow Steamship Co. v. 23 C. P. R.	234
Bennett, Crane v. 33 C. P. R.	229
Bennett v. Leeds Manufacturing Co. 14 C. P. R.	441
Bennett v. Long Island Railroad Co. 34 C. P. R.	292
Bennett, Salisbury v. 25 C. P. R.	306
Bennett, Sawyer v. 22 C. P. R.	343
Bennett, Solomon v. 19 C. P. R.	104
Bennett v. Watson & Batholow, 26 C. P. R.	128
Bennett, Wilson v. 2 C. P. R.	34
Bennington, Matter of, 38 C. P. R.	240
Benoliel, Abeles v. 3 Law Rec.	128
Bentley, Chambers v. 15 C. P. R.	222
Benz, Watson v. 19 C. P. R.	172
Berdell v. Berdell, 2 C. P. R.	159
Berdell, Parkhurst v. 15 C. P. R.	354
Berdell, Wallace v. 8 C. P. R.	363

	Page
Berenbrock v. St. Luke's Hospital, 1 Law Rec...	251
Bergen v. Wykoff, 1 C. P. R.	1
Bergholtz v. Ithaca Street R. R. Co., 29 C. P. R.	291
Berlin, Stiefel v. 27 C. P. R.	216
Bergman v. Noble, 10 C. P. R.	190
Bergman v. Noble, 12 C. P. R.	256
Bernard v. Churchill, 1 Law Rec.	163
Bernard v. Morrison, 2 C. P. R.	399
Bernard v. Rogers, 3 Law Rec.	27
Bernard, Stedeker v. 9 C. P. R.	374
Berney, Estate of, 3 C. P. R.	122
Bernhard, Tallman v. 23 C. P. R.	284
Bernhardt, in re, 14 C. P. R.	195
Bernharth, Hoebler v. 17 C. P. R.	393
Bernheim, Martin v. 24 C. P. R.	441
Bernstein, Bielsky v. 2 Law Rec.	193
Bernstein, Constable v. 3 Law Rec.	141
Berolzheimer v. Strauss, 7 C. P. R.	225
Berthoff v. Carr, 17 C. P. R.	213
Berry, in re, 10 C. P. R.	173
Berry Bros. v. Sheehan, 37 C. P. R.	317
Best v. Davis Sewing Machine Co., 22 C. P. R...	362
Betchford, Lyons v. 8 C. P. R.	229
Betts v. Krindell, 13 C. P. R.	157
Betz, Bauer v. 7 C. P. R.	233
Bevens, Becker v., 38 C. P. R.	103
Benjamin v. Allen, 7 C. P. R.	202
Bick v. Reese, 17 C. P. R.	110
Bidwell v. Sullivan, 26 C. P. R.	392
Bieber, McLaughlin v. 29 C. P. R.	17
Biehler, Goettling v. 6 C. P. R.	324
Biel v Pinney, 26 C. P. R.	29
Bielsky v. Bernstein, 2 Law Rec.	193
Bien, Griswold v. 25 C. P. R.	123
Bierschenk v. Osborne, 3 Law Rec.	122
Biershenk v. Stokes, 23 C. P. R.	375
Bigelow, Plimpton v. 3 C. P. R.	182
Bigelow, Plimpton v. 4 C. P. R.	189

	Page
Bilbrough, Globe Yarn Mills v. 22 C. P. R.	186
Biliaska v. Hamburg Am. Co., 1 Law Rec.	74
Billings v. Pickert, 9 C. P. R.	193
Billington v. Billington, 16 C. P. R.	56
Billwiller v. Marks, 21 C. P. R.	162
Bingham v. Bingham, 1 C. P. R.	166
Binghampton Trust Co. v. Clark, 28 C. P. R. ...	1
Binney, Loring v. 8 C. P. R.	297
Binns v. Manhattan Railway Co., 18 C. P. R. 42 note	
Birdsall, Grant v. 2 C. P. R.	422
Birdsall, Hazard v. 21 C. P. R.	304
Birkett v. Knickerbocker Ice Co., 10 C. P. R. ...	52
Birmingham Co., Gair v. 20 C. P. R.	233
Bishoff, Matter of, 1 Law Rec.	205
Bischoff, Nester v. 20 C. P. R.	12
Bishop v. Hughes, 38 C. P. R.	379
Bittiner v. Gomprecht, 29 C. P. R.	300
Black v. Curry, 1 C. P. R.	193
Blackington v. Stern, 18 C. P. R.	63
Blackman, Argrave v. 28 C. P. R.	362
Blaesi v. Blaesi, 14 C. P. R.	216
Blake, Barnes, v. 20 C. P. R.	17
Blake v. Bolte, 24 C. P. R.	166
Blake v. Clausen, 25 C. P. R.	310
Blaut, Fairbank v. 24 C. P. R.	334
Blake v. Harrigan, 19 C. P. R.	207
Blake v. Harrington, 20 C. P. R.	424
Blake v. Spence, 1 Law Rec.	157
Blake, Wallace v. 16 C. P. R.	384
Blair, Matter of, 24 C. P. R.	304
Blanc v. Blanc, 23 C. P. R.	101
Blanc v. Blanc, 2 Law Rec.	172
Blanc v. Walters, 2 Law Rec.	172
Blanc v. Sadler, 1 Law Rec.	64
Blanchard, Fessenden v. 14 C. P. R.	277
Blanchard v. Reiley, 11 C. P. R.	278
Blankman v. McQueen, 19 C. P. R.	290
Blasier Mfg. Co., Salmon v. 38 C. P. R.	437

	Page
Blatchford v. Paine, 3 Law Rec.	37
Blauvelt v. Powell, 20 C. P. R.	186
Bleck, Mingst v. 7 C. P. R.	314
Bleckhert, Hillis v. 17 C. P. R.	254
Bliss v. Bliss, 11 C. P. R.	94
Bliss, Goff v. 12 C. P. R.	99
Bliss v. Murray, 17 C. P. R.	64
Bliss, Nehrsboss v. 2 C. P. R.	39
Bliss v. Winters, 29 C. P. R.	271
Bloch, Boun v. 13 C. P. R.	275
Block, Gross v. 14 C. P. R.	314
Blodgett, Wood v. 15 C. P. R.	114
Bloete v. Simon, 12 C. P. R.	114
Bloomfield v. Ketcham, 5 C. P. R.	407
Bloomfield, Tift v. 4 C. P. R.	349
Bloomgarden v. Hoffman, 38 C. P. R.	213
Bloomingdale v. Loy, 3 Law Rec.	212
Blum v. Dabeitz, 33 C.P.R.	290
Blumenthal, Estate of, 1 Law Rec.	175
Blumenthal, Clark v. 9 C. P. R.	40
Blumenthal v. Hudson Boot & Shoe Co., 21 C. P. R.	217
Blye, Corn Exchange Bank v. 9 C. P. R.	412
Board of Coms., People ex rel. Gould v. 1 C. P. R.	244
Board of Com's. of Greene Co., People v. 2 C. P. R.	452
Board of Education of the City of Brooklyn, in re, 19 C. P. R.	420
Board of Education, Jordon v. 25 C. P. R.	89
Board of Education v. King, 7 C. P. R.	64
Board of Education v. Matter of, 27 C. P. R.	109
Board of Education of Yonkers, Murphy v. 17 C. P. R.	170
Board of Supervisors of Oneida Co., Toole v. 25 C. P. R.	267
Boardman v. Trotter, 17 C. P. R.	284
Bode v. Maiberger, 12 C. P. R.	53
Bodine, Alfred, Accounting of, 39 C. P. R.	310

	Page
Bee, Hirschspring v. 13 C. P. R.	125
Boehm, Sherman v. 7 C. P. R.	34
Baer v. Manhattan Railway, 1 Law Rec.	149
Bogert, Estate of, 4 C. P. R.	441
Bogert, Estate of, 6 C. P. R.	128
Bogart v. Bogart, 1 Law Rec.	40
Bogart, Dawson v. 10 C. P. R.	56
Bogardus, Boughton v. 7 C. P. R.	252
Boggs, Leary v. 3 C. P. R.	227
Boiesen, Herzberg v. 2 Law Rec.	176
Bolger, McKenna v.	127
Bolt v. Hauser, 19 C. P. R.	7
Bolt v. Hauser, 19 C. P. R.	210
Bolte, Blake v. 24 C. P. R.	166
Bolton, Myers v. 28 C. P. R.	397
Bolton v. Prudential Insurance Co., 1 Law Rec.	255
Bolton v. Schriever, 19 C. P. R.	398
Bomeisler v. Forster, 27 C. P. R.	46
Bondy, American Credit Co. v. 2 Law Rec.	41
Bonn v. Block, 13 C. P. R.	275
Bonn v. Bonn, 1 Law Rec.	102
Bonner, Sims v. 21 C. P. R.	279, 355
Bonnell v. Griswold, 8 C. P. R.	280
Bonnell Co., Stewart v. 2 Law Rec.	28
Bonner, Hausselt v. 17 C. P. R.	320
Bonner, Hinds v. 38 C. P. R.	85
Bonnie, Schoonmaker v. 16 C. P. R.	64
Boone v. McGucken, 23 C. P. R.	115
Bord v. N. Y. C. & H. R. R. R. Co., 6 C. P. R.	222
Bork, Bender v. 38 C. P. R.	113
Borrowe v. Corbin, 27 C. P. R.	366
Borst, People ex rel v. Grant, 10 C. P. R.	173
Boston National Bank v. Armour, 16 C. P. R.	147
Bostwick v. Bostwick, 1 Law Rec.	254
Bostwick v. Bostwick, 2 Law Rec.	24
Bostwick v. Fifield, 4 C. P. R.	79
Bostwick, Brinkerhoff v. 7 C. P. R.	340
Botchford, Todd v. 1 C. P. R.	402

	Page
Boughton v. Bogardus, 7 C. P. R.	252
Bourke v. Grout, 35 C. P. R.	84
Bowden, Prentiss v. 24 C. P. R.	295
Rowe, Adams v. 3 C. P. R.	191
Bowe v. Braunnbrauer, 25 C. P. R.	57
Bowe v. Campbell, 2 C. P. R.	232
Bowe, Cosgrove v. 2 C. P. R.	61
Bowe, Lyman v. 5 C. P. R.	157
Bowe, Mallory v. 5 C. P. R.	241
Bowe, Nebresheimer v. 3 C. P. R.	363, 368
Bowe v. U. S. Reflector Co., 4 C. P. R.	154
Bowe v. U. S. Reflector Co., 8 C. P. R.	33
Bowen v. Ludvik, 38 C. P. R.	358
Bowen v. Stilwell, 9 C. P. R.	277
Bowen v. Sweeney, 22 C. P. R.	79
Bowen v. Sweeney, 25 C. P. R.	128
Bowers v. Denton, 34 C. P. R.	12
Bowers, Smith v. 3 C. P. R.	72
Bowery Savings Bank v. Haigh, 13 C. P. R.	56
Bowery Savings Bank, Walsh v. 9 C. P. R.	177
Bowery Savings Bank, Walsh v. 10 C. P. R.	32
Bowler v. Mutual Life Ins. Co., 1 Law Rec.	158
Browerick, Chester v. 21 C. P. R.	47
Bowman v. Hoffman, 22 C. P. R.	371
Bowman, Leonard v. 21 C. P. R.	237
Bowne, Compton v. 23 C. P. R.	225
Boyce v. Dumars, 37 C. P. R.	181
Boyce, in re James, 19 C. P. R.	23
Boyd v. Boyd, 24 C. P. R.	230
Boyd v. Boyd, 31 C. P. R.	248
Boyd v. Gorman, 28 C. P. R.	320
Boyd v. Smith, 3 C. P. R.	347, 416
Boyd v. U. S. Mortgage & Trust Co., 38 C. P. R.	1
Boylan, Mary, Estate of, 28 C. P. R.	233
Boylan v. Mathews, 3 C. P. R.	38
Boylard, Cassidy v. 15 C. P. R.	320
Boyle v. Southern Ry. Co., 32 C. P. R.	218
Boynton, Saw & File Co., in re, 6 C. P. R.	342

	Page
Bracken v. Atlantic Trust Co., 3 Law Rec.	158
Brackeleer, Anderson v. 28 C. P. R.	306
Brackeleer, Mechanics National Bank v. 28 C. P. R.	306
Bradford, Bordell & Kinzera R. R. Co., Sheehan v. 15 C. P. R.	429
Bradthurst, Jackson v. 25 C. P. R.	228
Bradley v. Albemarle Fertilizing Co., 2 C. P. R.	50
Bradley & Currier Co., limited v. Herter, 23 C. P. R.	408
Bradley Salt Co. v. Meinhold, 28 C. P. R.	86
Bradley v. Shafer, 22 C. P. R.	299
Bradley v. Walker, 22 C. P. R.	1
Bradner, Abel v. 15 C. P. R.	241
Bradner, Sutherland v. 7 C. P. R.	90
Brady v. Kingsland, 5 C. P. R.	413
Brady v. Martin, 19 C. P. R.	134
Bradly v. Nally, 23 C. P. R.	384
Brady, People v. 19 C. P. R.	372
Brainerd v. White, 7 C. P. R.	43
Brandy, Marvin v. 18 C. P. R.	343
Branth v. Branth, 19 C. P. R.	28
Branth v. Branth, 20 C. P. R.	33
Brasher, Lerche v. 8 C. P. R.	115
Brasher, Lerche v. 11 C. P. R.	423
Braun, Nauman v. 20 C. P. R.	77
Brassington v. Rohrs, 23 C. P. R.	146
Bratt, Fort Miller Pulp and Paper Co. v. 39 C. P. R.	373
Brazee v. Town of Hornby, 29 C. P. R.	296
Brennen, Hanley v. 12 C. P. R.	147
Brennan, Jarvis v. 24 C. P. R.	383
Brennan, Estate of John, 9 C. P. R.	56
Brennan, Klock v. 20 C. P. R.	139
Brennan v. Hull, 20 C. P. R.	434
Brennen, McLean v. 3 Law Rec.	127
Brennen v. North, 25 C. P. R.	398
Brennen, Weissner v. 21 C. P. R.	37

	Page
Brown v. Powers, 31 C. P. R.	126
Brown, Russell as adm. v. 3 Law Rec.	50
Brown v. Sears, 27 C. P. R.	412
Brown v. Sequa Iron Co., 1 Law Rec.	207
Brown v. Sleeman, in re, 12 C. P. R.	20
Brown, Winchester v. 19 C. P. R.	68
Browne v. Browne, 9 C. P. R.	180
Brownell, Krill v. 10 C. P. R.	8
Browning v. Brown, 2 Law Rec.	88
Browning v. Hayes, 11 C. P. R.	223
Browning v. New York Lake Erie & W. R. R., 22 C. P. R.	190
Bruen v. Manhattan Railway Co., 20 C. P. R. ..	127
Brulatour, Robinson v. 37 C. P. R.	9
Brumberg, Garson v. 23 C. P. R.	306
Bruning, Horan v. 39 C. P. R.	74
Brunnbauer, Bowe v. 25 C. P. R.	57
Bruns v. Kane, 12 C. P. R.	87
Brush, Fairman v. 21 C. P. R.	155
Brush v. Hoar, 14 C. P. R.	297
Bruxy v. Burke, 2 Law Rec.	200
Bryan, Valiente v. 3 C. P. R.	358
Bryan v. Wilkinson, 15 C. P. R.	74
Bryan v. Wilkinson, 16 C. P. R.	279
Brynes v. Labagh, 12 C. P. R.	417
Buchanan, Patterson v. 29 C. P. R.	238
Buck, Easton Co. v. 2 Law Rec.	103, 104
Buckhout, Rall v. 2 C. P. R.	442
Buckingham v. White, 1 C. P. R.	365
Buckley v. Drake, 9 C. P. R.	336
Buckley v. Gutta Percha and Rubber Mfg. Co. 3 C. P. R.	428
Buckley v. Moses, 23 C. P. R.	28
Buccolo v. N. Y. Life Ins. Co., 38 C. P. R.	130
Budd v. Smales, 38 C. P. R.	472
Budd v. Smales, 8 C. P. R.	230
Budd v. Walker, 3 C. P. R.	422
Budlong, Matter of, 18 C. P. R.	18

	Page
Buerlin v. Hodges, 19 C. P. R.	107
Buermann v. Buermann, 9 C. P. R.	146
Buffalo, City of, Horne v. 15 C. P. R.	81
Buffalo Creek Railroad Co. v. Collins, 29 C. P. R.	258
Buffalo & Grand Island Ferry Co. v. Allen, 12 C. P. R.	64
Buffalo Grape Sugar Co., Duche v. 2 C. P. R. ...	268
Buffalo Ice Co., in re, 29 C. P. R.	54
Burgett v. Strickland, 5 C. P. R.	276
Burke, Bruxey v. 2 Law Rec.	200
Bulman-Warner Paint Co., McGovern v. 28 C. P. R.	212
Bulkley v. Moll, 2 Law Rec.	154
Bull v. Rothschild, 16 C. P. R.	356
Bullard, Estate of, 4 C. P. R.	284
Bullen v. Murphy, 8 C. P. R.	266
Bumford, Gallowitz v. 39 C. P. R.	24
Bump v. N. Y. & N. H. R. R. Co., 29 C. P. R.	141
Bunce v. Bunce, 20 C. P. R.	332
Bundick v. Hale, 4 C. P. R.	311
Bundschn v Simon, 23 C. P. R.	80
Bunke v. N. Y. Telephone Co., 34 C. P. R.	170
Burke v. Rhoades, 33 C. P. R.	162
Bunnell, Jackson v. 17 C. P. R.	79
Bunzl, Goodwin v. 6 C. P. R.	226
Burbank, Matter of, 34 C. P. R.	247
Burch v. Burch, 38 C. P. R.	377
Burchell v. Burchell, 1 Law Rec.	32
Burdy v. Knights of St. John, 1 Law Rec.	251
Burghen v. Erie Railway Co., 39 C. P. R.	201
Burgoyne v. Eastern & Western R. R. Co., 19 C. P. R.	384
Burke, Matter of, 38 C. P. R.	241
Burke v. Phillips, 26 C. P. R.	374
Burkhalter, National Exchange Bank v. 22, C. P. R.	414
Burliss, Smith v. 28 C. P. R.	89
Burley v. German Am. Bank, 5 C. P. R.	172

	Page
Burlington & H. R. R., <i>Smith v. 3 Law Rec.</i>	79
Burnhart v. Rice, 21 C. P. R.	331
Burnett v. Mitchell, 29 C. P. R.	201
Burnett, Patterson v. 17 C. P. R.	115
Burnett v. Riker, 13 C. P. R.	388
Burns v. Del. Lack & W. R. R. Co., 22 C. P. R.	43
Burns v. Mullen, 29 C. P. R.	344
Burns, Shapiro v. 23 C. P. R.	365
Burr, Matter of, 39 C. P. R.	110
Burrell v. Do Sim, 24 C. P. R.	243
Burroughs, Pringle v. 37 C. P. R.	223
Burt v. Oneida Community (limited) 20 C. P. R.	167
Burnett, Cohn v. 1 C. P. R.	211
Burton, Knapp v. 7 C. P. R.	448
Burton v. Linn, 2 Law Rec.	170
Busch, Duval v. 13 C. P. R.	366
Busch, Duval v. 14 C. P. R.	6
Bush, Frank v. 2 C. P. R.	250
Bush v. O'Brien, 31 C. P. R.	324
Bush Co., Alfson v. 35 C. P. R.	104
Bushnell, Palen v. 17 C. P. R.	56
Bushwick Chemical Works, Fitchburgh National Bank v. 13 C. P. R.	155
Bushwick Chemical Works, First Natl. Bank of Marietta v. 17 C. P. R.	229
Bussey, United Land and Investment Co. v. 17 C. P. R.	165
Butler v. Fraser, 1 Law Rec.	153
Butler, Kingsford v. 23 C. P. R.	228
Butler, Matter of, 8 C. P. R.	56
Butler, Ross v. 19 C. P. R.	152
Butler Hard Rubber Co. v. Solomon Toube Co., 38 C. P. R.	23
Butler v. Wright, 37 C. P. R.	253
Button v. Chapin, 7 C. P. R.	278
Button v. Lusk, 19 C. P. R.	111
Butterick Publishing Co. v. King, 2 Law Rec.	45
Butts v. Scheiffelin, 5 C. P. R.	416

	Page
Byrne v. Byrne, 35 C. P. R.	145
Byrne v. French, 3 C. P. R.	180
Burne, Reiley v. 1 C. P. R.	201
Byrnes, Austin v. 12 C. P. R.	332
Byrnes v. Ladew, 1 Law Rec.	10
Byrnes, Gilman v. 10 C. P. R.	46
Byrnes v. Ladew, 25 C. P. R.	194
Byrnes, Lugar v. 15 C. P. R.	72

C

Caamano, In re, 8 C. P. R.	29
Cabot v. Ensign, 13 C. P. R.	89
Cadenas, Higuera v. 7 C. P. R.	305
Cadenas, Tynan v. 7 C. P. R.	305
Caffrey, In re, 31 C. P. R.	72
Cahill v. Cahill, 9 C. P. R.	241
Cahn v. Cahn, 2 Law Rec.	196
Cahill, Lyons v. 12 C. P. R.	72
Cahill, Lyon v. 13 C. P. R.	314
Cain v. Flood, 21 C. P. R.	116
Calder, Barry v. 15 C. P. R.	14
Caldwell, Griswold v. 25 C. P. R.	123
Caldwell v. Wall, 11 C. P. R.	67
Callan, Fowler v. 4 C. P. R.	412
Callan, Fowler v. 9 C. P. R.	384
California Safe Deposit Co., Weil v. 2 Law Rec.	89
Callahan, Higgins v. 2 C. P. R.	302
Callender v. Smith, 26 C. P. R.	318
Callignon, Clinton Bank v. 24 C. P. R.	279
Callwell, Williams v. 26 C. P. R.	66
Calumet Social and Bowling Club, In re 1 Law Rec.	218
Calville v. Chubb, 20 C. P. R.	352
Cameron, MacWhinnie v. 19 C. P. R.	168
Cammann, Nichols v. 2 C. P. R.	375
Cammann, Ronalds v. 21 C. P. R.	320

	Page
Camp, Matter of, 24 C. P. R.....	159
Camp Mfg. Co. v. Harriman, 26 C. P. R.....	100
Camp v. Ingersol, 1 C. P. R.....	340
Campbell, Bowe v. 2 C. P. R.....	232
Campbell v. Emslie, 38 C. P. R.....	465
Campbell v. Gallagher, 18 C. P. R.....	90
Campbell, In re 14 C. P. R.....	408
Campbell, etc., Co. v. Lyddy, 1 C. P. R.....	364
Campbell, O'Neil v. 39 C. P. R.....	121
Campbell, Russ v. 1 C. P. R.....	41
Canada Steamship Co. v. Sinclair, 3 C. P. R....	284
Canary, Gillin v. 26 C. P. R.....	230
Canary v. Russell, 24 C. P. R.....	109
Candee v. Doying, 5 C. P. R.....	92
Candee v. Jones, 13 C. P. R.	160
Canarrie v. Knowles, 11 C. P. R.....	418
Canfield Publishing Co., Ruland v. 18 C. P. R....	282
Canfield, Gates v. 2 C. P. R.....	254
Cannice, Matter of, 38 C. P. R.....	231
Cannon v. Evans Trunk Railway, 1 Law Rec....	123
Cannon, Mulligan v. 25 C. P. R.....	348
Cannon v. N. Y. City R. R. Co., 38 C. P. R.....	492
Cantor, Reed, etc., Murray v. 26 C. P. R.....	81
Capitol City Bank v. Parent, 20 C. P. R.....	38
Cardwell, Easton v. 11 C. P. R.....	301
Carey v. Browne, 23 C. P. R.....	137
Carleton v. Mayor, etc., 5 C. P. R.....	418
Carling v. Percell, 23 C. P. R.....	140
Carlisle v. Barnes, 35 C. P. R.....	140
Carney v. Wadhams, 9 C. P. R.....	204
Caro v. Metropolitan Railroad Co., 2 C. P. R....	371
Carpenter v. Cummings, 2 Law Rec.....	49
Carpenter, Yates County National Bank v. 14 C. P. R.....	2
Carr, Bertholf v. 17 C. P. R.....	213
Carrigan v. Washburn, 14 C. P. R.....	350
Carrigan v. Washburn, 18 C. P. R.....	77, 79
Carrillo v. Carrillo, 17 C. P. R.....	220

	Page
Carroll v. Watters, 10 C. P. R.....	6
Carswell v. Alden, 12 C. P. R.....	137
Carter v. Barnum, 28 C. P. R.....	161
Carter v. De Camp, 9 C. P. R.....	214
Carter v. Ferguson, 20 C. P. R.....	21
Carter v. Hoffman, 2 C. P. R.....	328
Carter, People v. 14 C. P. R.....	241
Cartier v. Spooner, 39 C. P. R.....	127
Cartwright v. Arthur, 1 Law Rec.....	15
Cary, Sherry v. 13 C. P. R.....	256
Cary, Sherry v. 16 C. P. R.....	50
Caryngham v. Duffy, 20 C. P. R.....	81
Case v. Mannis, 19 C. P. R.....	296
Case v. Phoenix Bridge Co., 19 C. P. R.....	373
Case, Richardson v. 3 C. P. R.....	295
Cashman v. Reynolds, 18 C. P. R.....	317
Cashman v. Reynolds, 19 C. P. R.....	161
Cashman, Shidlovski v. 26 C. P. R.....	373
Casper v. Wallace, 5 C. P. R.....	361
Cass v. Higenbotam, 8 C. P. R.....	329
Cassell v. Fisk, 2 C. P. R.....	94
Cassidy v. Boyland, 15 C. P. R.....	320
Cassidy v. McFarland, 23 C. P. R.....	65
Castagnette v. Castagnette, 1 Law Rec.....	121
Castree v. Kirby, 2 C. P. R.....	334
Castro v. Uriarte, 2 C. P. R.....	210
Castle, Estate of, 15 C. P. R.....	276
Catlin v. Moss, 2 C. P. R.....	201
Catlin, Wightman v. 37 C. P. R.....	105
Cattle, People ex rel. v. Tucker, 16 C. P. R.....	129
Cavanagh v. Ocean Steam Navigation Co., 19 C. P. R.	315, 391
Cavanaugh v. O'Neill, 2 Law Rec.....	86
Caxton Book-Binding Co., White, Stokes & Allen v. 10 C. P. R.....	146
Cazza v. Cazza, 1 Law Rec.....	89
Central Park Baptist Church v. Patterson, 24 C. P. R.....	79

	Page
Central Park, North & East River R. R. Co., Rolston v. 26 C. P. R.	365
Central R. R. of New Jersey, Flin v. 20 C. P. R.	179
Central Railway of N. J., Flin v. 23 C. P. R.	106
Central Telephone & Telegraph Co., In re, 29 C. P. R.	29
Central Trust Co., Union Ins. Co. v. 24 C. P. R.	219
Central Trust Co., Union Insurance Co., v. 29 C. P. R.	1
Chadwick v. Spargur, 1 C. P. R.	422
Chamberlain, Beckley v. 22 C. P. R.	338
Chamberlin, Schoeneman v. 29 C. P. R.	137
Chambers v. Bentley, 15 C. P. R.	222
Chambers v. Chambers, 24 C. P. R.	187
Champlin, German-American Bank v. 11 C. P. R.	452
Chandler v. Powers, 1 C. P. R.	355
Chandler v. Erie Transfer Co., 19 C. P. R.	385
Channing v. Moore, 13 C. P. R.	349
Chapin, Durham v. 26 C. P. R.	248
Chapin, Button v. 7 C. P. R.	278
Chapman, Estate of, 1 Law Rec.	23
Chapman, Fox v. 38 C. P. R.	83
Chapman, Hubbard v. 27 C. P. R.	312
Chapman, Matter of, 31 C. P. R.	57
Chapman, Woodford v. 6 C. P. R.	315
Chase, Vilas v. 19 C. P. R.	333
Chatfield v. Reynolds, 18 C. P. R.	378
Chatham Nat'l Bank, Davidson v. 5 C. P. R.	167
Chatham National Bank, Empire Feed Co. v. 27 C. P. R.	226, 273
Chatham Nat'l Bank, Empire D. F. Co. v. 3 Law Rec.	111
Chattillon, People ex rel. v. Grant, 10 C. P. R. ...	171
Chaude v. Chaude, 12 C. P. R.	454
Chancery, Romaine v. 21 C. P. R.	76
Chauvet, Cuthbert v. 20 C. P. R.	391
Cheever v. Brown, 17 C. P. R.	51
Cheney v. Rankin, 29 C. P. R.	285

	Page
Chenoweth, Smith v. 11 C. P. R.....	138
Chenoweth, Smith v. 12 C. P. R.....	39
Chesley, Morton v. 25 C. P. R.....	230
Chester v. Browerick v. 21 C. P. R.....	47
Chicago & Alton R. R. Co., Tuckland v. 16 C. P. R.	241
Ohicago & Alton R. R. Co., Tuckland v. 17 C. P. R.	424
Ohicago, Rock Island, etc., R. R. Co., Gervais v. 18 C. P. R.....	403
Ohicago Newspaper Union, Clegg v. 8 C. P. R..	401
Ohicago, Rock Island & Pacific R. R. Co., Gervais v. 20 C. P. R.....	95
Childs v. Harris Manufg. Co., 12 C. P. R.....	11
Childs, Horton v. 19 C. P. R.....	103
Childs v. Tuttle, 15 C. P. R.....	182
Chilson v. Howe, 17 C. P. R.....	82
Chinese Chait & B. A., Robinson v. 3 Law Rec..	16
Chisholm, Turck v. 39 C. P. R.....	1
Choate In re. 18 C. P. R.....	180
Choate, People ex rel. v. Barrett, 18 C. P. R ..	230
Chormann v. Bachman, 39 C. P. R.....	166
Christian Jensen Co. In re. 21 C. P. R.....	241
Christenson v. Pincus, 38 C. P. R.	371
Christiano, Sommers v. 2 Law Rec.....	155
Ohristopher & Tenth St. R. R. Co., Kummer v. 24 C. P. R.....	403
Chubb, Colville v. 20 C. P. R.....	352
Church v. Hempstead, 27 C. P. R.....	231
Church, Sand v. 27 C. P. R.....	405
Church of St. Mary and Corvin, Leary v. 30 C. P. R.	38
Church of St. Augustine, In re. 1 Law Rec.....	74
Churchman v. Merrett, 15 C. P. R.....	245
Citizens' Savings Bank v. Bauer, 14 C. P. R....	340
Citwin v. Froudenheim, 1 Law Rec.....	61
City of Brooklyn v. Long Island Water Supply Co., 25 C. P. R.....	14

	Page
City of Brooklyn, <i>Negus v. 1 C. P. R.</i>	471
City Bank of Houston, <i>Lanier v. 9 C. P. R.</i>	161
City of Hudson, <i>Jenkins v. 8 C. P. R.</i>	70
City of Middletown, <i>In re 2 C. P. R.</i>	201
City of Middletown, <i>In re, 2 C. P. R.</i>	12
City of New York, <i>McKnight v. 37 C. P. R.</i>	230
City of New York, <i>Munn v. 31 C. P. R.</i>	190
City of New York, <i>O'Connor v. 37 C. P. R.</i>	372
City of New York, <i>Rosenstock v. 34 C. P. R.</i>	16
City of New York, <i>Rosenstock v. 35 C. P. R.</i>	72
City of Rochester, <i>Baine v. 1 C. P. R.</i>	269
City of Rochester, <i>Hooker v. 20 C. P. R.</i>	189
City of Rochester, <i>Schurn v. 16 C. P. R.</i>	218
City of Syracuse, <i>Crapo v. 35 C. P. R.</i>	195
City of Utica, <i>Adams v. 6 C. P. R.</i>	294
City of Utica, <i>Herbage v. 14 C. P. R.</i>	74
Claffin v. Davidson, 8 C. P. R.	46
Claffin v. DuBois, 13 C. P. R.	234
Claffin v. DuBois, 14 C. P. R.	290
Claffin v. Frenkel, 3 C. P. R.	109
Claffin v. Gantz, 1 Law Rec.	167
Claffin v. Smith, 4 C. P. R.	240
Clare v. Lockwood, 19 C. P. R.	157
Clarendon v. Milliken Bros., 38 C. P. R.	359
Clark, Binghamton Trust Co. v. 28 C. P. R.	1
Clark v. Blumenthal, 9 C. P. R.	40
Clark v. Clark, 11 C. P. R.	7
Clark, Continental Store Service Co. v. 7 C. P. R.	183
Clark v. Corwin, 21 C. P. R.	108
Clark v. Dillon, 4 C. P. R.	245
Clark, Estate of, 12 C. P. R.	383
Clark, People ex rel. v. Grant, 14 C. P. R.	28
Clark, Gross v. 1 C. P. R.	17, 464
Clark v. Herbert Booth King Pub. Co., 29 C. P. R.	229
Clark, Hulburt v. 19 C. P. R.	177
Clark, etc., v. Killeen, 1 Law Rec.	13
Clark v. Lockhard, 13 C. P. R.	278

	Page
Clark, Matter of, 32 C. P. R.....	226
Clark, Matter of, 37 C. P. R.....	34
Clark v. Mosher, 13 C. P. R.....	215
Clark, Myers, 2 Law Rec.	169
Clark, People ex rel. v. Grant, 12 C. P. R.....	183
Clark, Pierson v. 38 C. P. R.....	226
Clark, Reavy v. 18 C. P. R.....	272
Clark, Riesgo v. 38 C. P. R.....	407
Clark v. Sullivan, 19 C. P. R.....	147
Clark, Sullivan v. 2 Law Rec.	66
Clark, Sutphen v. 29 C. P. R.....	313
Clason v. Baldwin, 21 C. P. R.....	383
Clason v. Baldwin, 20 C. P. R.....	291
Clason v. Stewart, 3 Law Rec.....	81
Clausen, Blake v. 25 C. P. R.....	310
Clausen, People ex rel. Bean v. 33 C. P. R.....	141
Clay v. Baker, 11 C. P. R.....	1
Clayton, Estate of, 17 C. P. R.....	68
Clearman v. Clearman, 15 C. P. R.....	313
Clegg v. Aiken, 8 C. P. R.....	249
Clegg v. Chicago Newspaper Union, 8 C. P. R..	401
Clemens v. American Fire Ins. Co. of Phila., 33	
C. P. R.....	1
Clement v. Mast, 39 C. P. R.....	249
Clifford v. Denver & R. G. R. R. Co., 38 C. P. R..	196
Clifton v. Brown, 2 C. P. R.....	44
Climax Cycle Co., Hoorman v. 26 C. P. R.....	25
Climax Specialty Co. v. Seneca Button Co., 38 C.	
P. R.	476
Climm, Frist v. 6 C. P. R.....	30
Clinton Bank v. Collignon, 24 C. P. R.....	279
Cluff, Estate of, 11 C. P. R.	338
Clute, Downey v. 12 C. P. R.....	435
Clum, Ersenlord v. 17 C. P. R.....	147
Clute v. Emerich, 16 C. P. R.....	123
Clute, In re. 16 C. P. R.....	123
Clyde, Lorrillard v. 3 C. P. R.....	307
Clyde, Odell v. 3 Law Rec.....	180

	Page
Coan v. Culver, 38 C. P. R.	317
Coar, Fries v. 13 C. P. R.	152
Coatesworth v. Ray, 28 C. P. R.	6
Cobb, Benedict v. 17 C. P. R.	245
Cobb, Crosley v. 9 C. P. R.	322
Cochrane v. Bennett, 1 Law Rec.	114
Cochrane, Johnson v. 25 C. P. R.	215
Cochrane v. Reich, 25 C. P. R.	147
Cody v. First Nat'l Bank of Springfield, O., 32 C. P. R.	148
Coenen, Haulenbeck, 20 C. P. R.	6
Coffey, Krainin v. 39 C. P. R.	315
Coffin, Hurry v. 2 C. P. R.	319
Coffin, Matter of, 34 C. P. R.	8
Coffin v. Northwestern Construction Co., 13 C. P. R.	9
Coffin v. Stitt, 5 C. P. R.	261
Coghlan v. Third Avenue Railway, 1 Law Rec. ..	58
Coghlan v. Third Ave. R. R., 25 C. P. R.	249
Cogswell v. New York, N. H. & H. R. R. Co., 12 C. P. R.	222
Cohahan v. Manhattan Railway, 1 Law Rec.	163
Cohen, Dougan v. 13 C. P. R.	295
Cohen, Emanuel v. 2 Law Rec.	69
Cohen, Fisher v. 27 C. P. R.	139
Cohen, Gardner v. 28 C. P. R.	67
Cohen, Kraus v. 2 Law Rec.	18
Cohen, Matter of, 18 C. P. R.	156
Cohen v. The Mayor, etc., 21 C. P. R.	124
Cohen, Upham v. 14 C. P. R.	27
Cohen, Wise v. 37 C. P. R.	152
Cohn v. Anathan, 16 C. P. R.	179
Cohn-Baer-Myers & Aronson Co. v. Realty Trans- fer Co., 38 C. P. R.	145
Cohn v. Burtnett, 1 C. P. R.	211
Cohn, Fuchs v. 22 C. P. R.	269
Cohn v. Husson, 5 C. P. R.	324
Cohn v. Husson, 17 C. P. R.	434

	Page
Cohn, Krippendorf-Ditman Co. v. 2 Law Rec..	49
Cohn, Mack v. 2 C. P. R.....	122
Cohn, People ex rel. v. Grant, 11 C. P. R.....	55
Cohn v. Sullivan, 38 C. P. R.....	112
Coin v. Tamsen, 1 Law Rec.	38
Coit v. Davis, 16 C. P. R.....	180
Colberg v. Emerson, 23 C. P. R.....	337
Colby v. Colby, 24 C. P. R.....	148
Cole, Brown v. 39 C. P. R.....	296
Cole v. Co-operative Dress Ass'n., 3 C. P. R....	127
Cole v. Lowry, 23 C. P. R.....	113
Cole v. McGarvey, 6 C. P. R.....	305
Cole v. Sweet, 37 C. P. R.....	86
Cole v. Sweet, 38 C. P. R.....	290
Colebrook, Bates v. 34 C. P. R.....	10
Colegrove, Michel v. C. P. R.....	297, 304
Colerick, Hosley v. 9 C. P. R.....	43
Coleman v. Hart, 1 Law Rec.....	211
Coleman v. Hernstein, 3 Law Rec.....	65
Coleman v. Phelps, 1 C. P. R.....	9
Collier v. Wineburgh, 1 Law Rec.....	248
Colligan, Estate of, 5 C. P. R.....	199
Colligan v. Workingman's Co-op. Assn., 1 Law Rec.	29
Collins v. Adams, 15 C. P. R.....	384
Collins v. Brandt, 1 Law Rec.....	163
Collins, Buffalo Creek Railroad Co. v. 29 C. P. R.	
Collins, Estate of, 6 C. P. R.....	85
Collins v. Jewell, 23 C. P. R.....	153
Collins, Wilson v. 39 C. P. R.....	91
Collis v. Alburtis, 9 C. P. R.....	80
Colt v. Colt, 1 Law Rec.....	69
Coltine v. Coltine, 3 Law Rec.....	70
Colton v. Morrissey, 38 C. P. R.....	474
Columbia Club, People ex rel. Elgan v. 20 C. P. R.	319
Columbian Institute v. Oregon, 11 C. P. R.....	87
Columbus, Hocking Valley & Toledo R. R. Co. v. Ellis, 19 C. P. R.....	66

	Page
Combs v. Combs, 1 C. P. R.	298
Comlay v. The Mayor, etc., 1 C. P. R.	306
Comley, Rowe v. 2 C. P. R.	424
Command, Nolan v. 11 C. P. R.	295
Commercial Adv. Asso. v. Haynes, 3 Law Rec. .	5
Commercial Bank of Newfoundland, Ladens- burg v. 24 C. P. R.	234
Commercial Mut. Ins. Co., Voisin v. 19 C. P. R.	220
Commercial Telegraph Co. v. Smith, 19 C. P. R.	32
Commonipaw C. Co. v. N. Y. Steam P. Co., 3 Law Rec. .	144
Compton v. Bowne, 23 C. P. R.	225
Connstock, Kennedy & Co. v. 15 C. P. R.	240
Conant, Turner v. 10 C. P. R.	192
Conde, Pardi v. 29 C. P. R.	48
Coneys, Dinan v. 23 C. P. R.	157
Concord Granite Co. v. French, 3 C. P. R.	56
Conger, Hall v. 7 C. P. R.	53
Congregation Kol Is. Anslin Poland v. Herlands, 1 Law Rec.	168
Congregation of Third Order of St. Francis, Dud- ley v. 22 C. P. R.	380
Conklin v. N. Y. Elevated Railway Co., 18 C. P. R.	366
Conklin v. Woodbury Dermatological Inst. 20 C. P. R.	42
Conlen v. Rizer, 35 C. P. R.	175
Connolly v. O'Connor, 18 C. P. R.	8
Connecticut Natl. Bank v. Hand, 1 Law Rec. .	158
Connecticut Trust Co., Tinker v. 29 C. P. R.	67
Conner, Johnstone v. 13 C. P. R.	19
Conner v. Watson, 29 C. P. R.	153
Connicks v. Connicks, 1 Law Rec.	164
Connor, Ansonia Brass & Copper Co. v. 3 C. P. R.	88
Connor, Ansonia Brass & Copper Co. v. 6 C. P. R.	173
Connor, Ansonia Brass & Copper Co. v. 7 C. P. R.	248

	Page
Connor, Ansonia Brass & Copper Co. v. 11 C.	
P. R.	371
Connor, Baxter v. 39 C. P. R.	363
Connor v. Connor, 20 C. P. R.	308
Connor v. Metropolitan St. R. R. Co., 33 C. P. R.	269
Connor, People ex rel. v. Purroy, 22 C. P. R.	116
Connor v. Philo, 38 C. P. R.	363
Connor v. Schoeffel, 19 C. P. R.	378
Conquest v. Barnes, 16 C. P. R.	268
Consolidated Ice Co. v. Mayor, etc., of New York,	
32 C. P. R.	9
Constable v. Bernstein, 3 Law Rec.	141
Constantine, Estate of, 16 C. P. R.	262
Constantino, Vera v. 33 C. P. R.	189
Contant, Estate of, 2 Law Rec.	152
Conte v. Conte, 34 C. P. R.	50
Continental Construction and Improvement	
Company v. Vinal, 14 C. P. R.	293
Continental Life Ins. Co., Attorney-General v. 4	
C. P. R.	214
Continental Nat'l Bank v. Myerle, 3 Law Rec. ..	22
Continental Railway & Trust Co., Wertheim v.	
3 C. P. R.	371
Continental Store Service Co. v. Clark, 7 C. P. R.	183
Coogan v. Ockerhausen, 11 C. P. R.	315
Cook, Lewis v. 25 C. P. R.	65
Cook v. Matteson, 19 C. P. R.	321
Cooke v. Lalance-Grosjean Manufacturing Co., 3	
C. P. R.	332
Cook v. Rief, 8 C. P. R.	133
Cooley v. Cummings, 17 C. P. R.	145
Cooley, Dimick v. 3 C. P. R.	141
Coon v. Diefendorf, 8 C. P. R.	293
Cooper, Flagg v. 11 C. P. R.	421
Cooper, In re. 37 C. P. R.	309
Cooper v. Jolly, 3 C. P. R.	9
Cooper v. Webb, 2 Law Rec.	133

	Page
Co-operative Dress Assn., Eddy v. 3 C. P. R...	
.....	127, 434, 442
Co-operative Dress Assn., Schulhoff, 3 C. P. R.	412
Corbin, Barrowe v. 3 Law Rec.....	136
Corbin, Barrowe v. 27 C. P. R.	360
Corbin v. Hastedt, 1 Law Rec.....	197
Corbin v. Staples, 1 Law Rec.....	206
Corbit v. Nicoll, 12 C. P. R.....	235
Corn Exchange Bank v. Bossie, 1 Law Rec....	243
Corn Exchange Bank v. Blye, 9 C. P. R.....	412
Corn Exchange Bank v. Markwald, 28 C. P. R..	412
Corn v. Tamsen, 25 C. P. R.....	283
Corn, Estate of, 9 C. P. R.....	243
Cornell, Donovan v. 8 C. P. R.....	283
Cornell, Donovan v. 9 C. P. R.....	222
Cornell, Spoor v. 12 C. P. R.....	319
Corning v. Roosevelt, 18 C. P. R.....	193, 399
Cornish, Fearing v. 10 C. P. R.....	77
Cornish v. Graff, 7 C. P. R.....	204
Cornish, Moulton v. 21 C. P. R.....	343
Cornish v. Wormser, 17 C. P. R.....	282
Cornwell v. Dickel, 6 C. P. R.....	416
Cornwell, Weeks v. 9 C. P. R.....	28
Corrigan v. Ritter, 21 C. P. R.....	82
Corwin and Church of St. Mary, Leary v. 30 C.	
P. R.	38
Corwin, Clark v. 21 C. P. R.....	108
Corwith, Del., L. & W. R. R. Co. v. 16 C. P. R..	312
Cosgriff v. The Hudson City Savings Institution,	
27 C. P. R.....	263
Cosgrove v. Bowe, 2 C. P. R.....	61
Cosmopolitan Pub. Co., Excelsior Steam Power	
Co. v. 24 C. P. R.....	93
Costa v. New York City Railway Co., 35 C. P. R.	135
Coster v. Greenpoint Ferry Co., 5 C. P. R.....	146
Cottrell, In 6 C. P. R.....	340
Couch v. Millard, 8 C. P. R.....	431
Coughlin, Acken v. 34 C. P. R.....	200

	Page
Countryman v. Countryman, 23 C. P. R.	161
Coupe, Matter of, 39 C. P. R.	22
Courier Co., Munsinger v. 24 C. P. R.	175
Court of General Sessions, People ex rel. Jerome v. 37 C. P. R.	219
Courtney v. Eighth Ward Bank of Brooklyn, 25 C. P. R.	157
Coveney, People ex rel. v. Kearney, 30 C. P. R. .	11
Covert, Locke v. 12 C. P. R.	31, 19
Coville, Beard v. 38 C. P. R.	24
Cowan, People v. 24 C. P. R.	146
Cowdrey v. Eichinger, 8 C. P. R.	203
Cowley v. Murphy, 19 C. P. R.	46
Cowles, Stebbins v. 4 C. P. R.	302
Coyne In re. 18 C. P. R.	397
Craft, Lambert v. 7 C. P. R.	364
Cragin v. Lovell, 2 C. P. R.	128
Craig, Frost v. 18 C. P. R.	296
Cramer v. Amberg, 16 C. P. R.	445
Crampton, Babbitt v. 1 C. P. R.	169
Crain v. McIver, 2 Law Rec.	60
Crandel, Noble v. 15 C. P. R.	265
Crandall, Rude v. 11 C. P. R.	11
Crane v. Bennett, 33 C. P. R.	229
Crane v. Barron, 37 C. P. R.	350
Crane v. Evans, 12 C. P. R.	445
Crane v. O'Reilly, 13 C. P. R.	71
Crane, People ex rel. v. Grant, 13 C. P. R.	209
Crane, Ryan v. 12 C. P. R.	431
Crane, Strowbridge Lithographic Co. v. 20 C. P. R.	15, 24
Crapo v. The City of Syracuse, 35 C. P. R.	195
Crary, In re, 9 C. P. R.	168
Crasto v. White, 17 C. P. R.	46
Crouch v. Hoyt, 24 C. P. R.	60
Craven, Oishei v. 24 C. P. R.	301
Crawford, Lytle v. 32 C. P. R.	360
Crawford v. McCarty, 2 Law Rec.	97, 108

	Page
Oregan, Columbian Institute v. 11 C. P. R.....	87
Oreighton, Hayes v. 19 C. P. R.....	299
Cremins v. East Lake Woolen Co., 25 C. P. R....	365
Creteau v. Foote & Thorne Glass Co., 31 C. P. R.	265
Crichton, Higgins v. 2 C. P. R.....	317
Crissey, Smith v. 4 C. P. R.....	433
Crittendon, Grant v. 13 C. P. R.....	123
Crocheron, Sandford v. 8 C. P. R.	146
Cromwell, Mander v. 24 C. P. R.....	368
Cromwell v. Spofford, 4 C. P. R.....	273
Cronin v. Cronin, 9 C. P. R.....	137
Crosby v. Puels, 1 Law Rec.....	179
Crosby, Thedford v. 7 C. P. R.....	245
Crosley v. Cobb, 9 C. P. R.....	322
Cross v. National Fire Ins. Co., 17 C. P. R.....	199
Crossitt v. Wiles, 13 C. P. R.....	327
Crossman v. Crossman, 5 C. P. R.....	204
Crossman, In re, 3 C. P. R.....	65
Crossman v. Smith, 38 C. P. R.	356
Crouse v. Reichert, 21 C. P. R.....	39
Crow v. Crow, 7 C. P. R.....	423
Crow, Mazet v. 18 C. P. R.....	178
Crowe, Thoessen v. 19 C. P. R.....	74
Crowley v. Murphy, 3 Law Rec.....	189
Crowley v. Royall Exchange Shipping Co., 2 C. P. R.	174
Cudlip v. N. Y. Evening Journal Co., 34 C. P. R.	175
Cudahy v. Rhinehart, 21 C. P. R.	52
Cuff, Harris v. 15 C. P. R.	104
Cullen v. Wiederman, 2 Law Rec.	96
Cullen v. Uptegrove, 34 C. P. R.	181
Cullings, Harvey v. 35 C. P. R.	273
Culver, Barclay v. 4 C. P. R.	365
Culver, Coann v. 38 C. P. R.	317
Cuming v. Whiting, 12 C. P. R.....	443
Cummings, Carpenter v. 2 Law Rec.	49
Cummings, Cooley v. 17 C. P. R.	145
Cummings, National Protective Assn. of Steam	

	Page
Fitters and Helpers v. 31 C. P. R.	145
Cummings, Natl. P. A. of S. Fitters, 3 Law Rec.	73
Cummings, Voorhees v. 29 C. P. R.	378
Cunard v. Franklyn, 15 C. P. R.	134
Cunard v. Francklyn, 16 C. P. R.	59
Cunard Steamship Co., Barker v. 25 C. P. R....	109
Cunanan, Matter of, 2 Law Rec.	76
Cunningham v. Cunningham, 2 Law Rec.	78
Cunningham v. Eliseman, 4 C. P. R.	220
Cunningham v. Hetch, 23 C. P. R.	82
Cunningham v. Massena Springs and Fort Cov- ington R. R. Co., 16 C. P. R.	244
Cunningham v. Seligman, 1 Law Rec.	162
Cunningham, Wemple Co. v. 2 Law Rec.	10
Cupfer v. Frank, 4 C. P. R.	53
Curley, Fitzsimmons v. 6 C. P. R.	156
Curley, Murtha v. 3 C. P. R.	1, 86, 266
Curlette v. Olds, 35 C. P. R.	306
Currie, Graeffe, v 8 C. P. R.	187
Curran, Howard v. 8 C. P. R.	263
Currie, Orr v. 25 C. P. R.	16
Curry, Black v. 1 C. P. R.	193
Curry, Matter of, 1 C. P. R.	319
Curser, Estate of, 2 C. P. R.	411
Curtin v. Metropolitan Street R. R., 27 C. P. R... ..	97
Curtis v. Graham, 15 C. P. R.	8
Curtis, Matter of, 26 C. P. R.	108
Curtiss, Movewood v. 13 C. P. R.	218
Curtis, Munson v. 15 C. P. R.	131
Curtis, Whitman v. 2 Law Rec.	65
Cushing v. Ruslander, 15 C. P. R.	106
Cushing, Van Voast v. 28 C. P. R.	4
Cuthbert v. Chauvet, 20 C. P. R.	391
Cuthbert, Ives et al., N. Y. Life Ins. & Trust Co. v. 25 C. P. R.	377
Cutting, Ransom v. 38 C. P. R.	396

D

	Page
Dabol, Tripp v. 11 C. P. R.	112
Daggett, Wilson Bros. Woodenware & Toy Co. v. 9 C. P. R.	408
Dalon v. Kapp, 11 C. P. R.	58
Dalton v. Sandland, 4 C. P. R.	73
Dalton v. Vanderveer, 23 C. P. R.	443
Daly, Anderson v. 29 C. P. R.	257
Daly, Gilpin v. 20 C. P. R.	91
Daly, Ottman v. 17 C. P. R.	62
Damman v. Peterson, 26 C. P. R.	63
Danahan v. City of Brooklyn, 4 C. P. R.	286
Dammers v. Sternberger, 38 C. P. R.	362
Daniel v. Daniel, 2 C. P. R.	238
Daniells v. Southard, 29 C. P. R.	39
Dannat v. Jones, 1 Law Rec.	131
Dannhauser v. Wallenstein, 32 C. P. R.	276
Danzig, Smith v. 3 C. P. R.	127
Danziger v. Silberthan, 21 C. P. R.	283
Dascher v. Dascher, 2 Law Rec.	33
Dare v. Murphy, 12 C. P. R.	389
Darcy, Estate of, 1 Law Rec.	142
Darmstadt, Russo v. 38 C. P. R.	76
Davenport, Fetchman v. 8 C. P. R.	220
Davenport Glucose Mfg. Co. v. Tausig, 5 C. P. R.	69
Davenport Glucose Co. v. Taussig, 6 C. P. R.	152
Davenport, Matter of, 32 C. P. R.	327
Davenport, Matter of, 33 C. P. R.	211
Davenport, Ruth v. 22 C. P. R.	121
Davies, Attorney-General, Matter of, 32 C. P. R.	163
Davies, Green v. 34 C. P. R.	1
Davies v. Lincoln National Bank, 16 C. P. R.	68
Davies v. Mayor, 4 C. P. R.	290
Davies v. Williams, 13 C. P. R.	138
Davidson v. Chatham Natl. Bank, 5 C. P. R.	167
Davidson, Claffin v. 8 C. P. R.	46
Davidson v. Davidson, 1 Law Rec.	6

	Page
Davison, Dolan v. 25 C. P. R.	403
Davidson v. Goodman, 2 Law Rec.	24
Davidson, Hayes v. 6 C. P. R.	330, 377
Davidson, Hayes v. 7 C. P. R.	46
Davidson, Hein v. 5 C. P. R.	28, 391
Davidson, Miller v. 3 C. P. R.	389
Davidson, Potts v. 7 C. P. R.	97
Davidson, Soria v. 9 C. P. R.	23
Davis v. Benedict, 20 C. P. R.	267
Davis v. Corrine, 1 Law Rec.	2
Davis, Colt v. 16 C. P. R.	180
Davis, Frank v. 21 C. P. R.	374
Davis, Frank v. 22 C. P. R.	426
Davis v. Gallagher, 29 C. P. R.	149
Davis v. Jones, 8 C. P. R.	43
Davis, Jane, Matter of, 35 C. P. R.	151
Davis v. Knights of Honor, 31 C. P. R.	298
Davis, Mills v. 16 C. P. R.	417
Davis v. N. Y., L. E., & W. R. R. Co., 15 C. P. R.	62
Davis v. Rosenzweig Realty Operating Co., 38 C. P. R.	455
Davis v. Schrenkeisen, 2 Law Rec.	16
Davis, Schumann v. 19 C. P. R.	348
Davis Sewing Machine Co., Best v. 22 C. P. R.	302
Davis, Smith v. 3 C. P. R.	74
Davis, Smith v. 4 C. P. R.	158
Davis v. Solomon, 28 C. P. R.	420
Davis, Williams v. 7 C. P. R.	282
Davy, Hummel v. 35 C. P. R.	233
Dawson v. Bogart, 10 C. P. R.	56
Dawson, Duffy v. 22 C. P. R.	235
Dawson, in re, 13 C. P. R.	142
Dawson, Roeber v. 15 C. P. R.	417
Dawson, Wilson v. 13 C. P. R.	142
Day v. Bank of State of New York, 9 C. P. R. ..	51
Day, Griggs v. 22 C. P. R.	146
Day, Griggs v. 26 C. P. R.	190
Day v. Harris, 20 C. P. R.	255
Dayton v. McElwee Mfg. Co., 22 C. P. R.	227

	Page
Day v. McGregor, 1 Law Rec.	222
Day, Parker v. 27 C. P. R.	211
Dayton v. Weston, 1 Law Rec.	165
Dean v. City of New York, 27 C. P. R.	317
Deane, Malby-Henley Co. v. 28 C. P. R.	338
Dean, Possen v. 8 C. P. R.	177
Debenbaum, Snyder v. 3 Law Rec.	7
Debevoise v. Hortell, 1 Law Rec.	117
De Camp, Carter v. 9 C. P. R.	214
De Camp v. Dempsey, 10 C. P. R.	210
Decker v. Dime Savings Inst., 1 Law Rec.	208
Decker v. Kitchen, 2 C. P. R.	111
Decker, Rockwell v. 5 C. P. R.	62
Decker, Sacia v. 1 C. P. R.	47
De Cen, Adolf v. 13 C. P. R.	5
Deegan v. Karp, 13 C. P. R.	202
Deering v. Reilly, 32 C. P. R.	49
Deeves v. Metropolitan Realty Co. 25 C. P. R. ...	276
De Foe, Matter of, 35 C. P. R.	66
DeForest v. Andrews, 29 C. P. R.	250
DeForrest, Genez v. 15 C. P. R.	145
DeForest, Matter of, 24 C. P. R.	363
Degener, Ludden v. 26 C. P. R.	182
DeGroot, Matter of, 18 C. P. R.	102
DeKlyn v. Gould, 31 C. P. R.	223
DeHaas, Matter of, 27 C. P. R.	336
Delaney v. Singhi, 3 Law Rec.	42
DeLano, Grindall v. 21 C. P. R.	224
Delafield v. J. D. Armsby Co., 32 C. P. R.	132
Delancy v. Delancy, 26 C. P. R.	350
Delaplaine, Estate of John F., 12 C. P. R. ...	35, 401
De la Rionda, Wings v. 20 C. P. R.	183
Delaney, Pattison v. 20 C. P. R.	427
Delaware & Hudson Canal Co., Genet v. Presi- dent of, 12 C. P. R.	443
Delaware & Hudson Canal Co., Genet v. Presi- dent of, 17 C. P. R.	55

	Page
Delaware & Hudson Canal Co., Genet v. 19 C. P. R.	82
Delaware & Hudson Canal Co., Genet v. 33 C. P. R.	14
Delaware, Lack. & W. R. R. Co., Binns v. 22 C. P. R.	43
Delaware, L. & W. R. R. Co. v. Corinth, 16 C. P. R.	312
Delaware, Lackawana and Western Railroad Co., Maxson v. 14 C. P. R.	248
Delaware, L. & W. R. R. Co., McQuiglan v. 21 C. P. R.	396
DeLazarde, Knowles v. 8 C. P. R.	386
Delin v. Stohl, 2 C. P. R.	222
Delisser v. N. Y., New Haven & Hartford R. R. Co., 20 C. P. R.	312
DeLong v. Hogan, 1 Law Rec.	126
DeLong, in re, 25 C. P. R.	363
DeLove v. Hogan, 1 Law Rec.	247
DeMeir, Nordlinger v. 18 C. P. R.	47
DeMeli v. DeMeli, 5 C. P. R.	306
Democratic General Committee of Kings County, McKane v. 14 C. P. R.	126
Demarest, Estate of, 1 C. P. R.	302
Demorest, Kutkoff v. 11 C. P. R.	67
Dempewolf v. Hills, 11 C. P. R.	14
Dempsey v. Baldwin, 1 Law Rec.	103
Dempsey v. Collis, 1 Law Rec.	254
Dempsey, De Camp v. 10 C. P. R.	210
Dempsey, Fenlon v. 15 C. P. R.	393
Dempsey, Finkemaur v. 8 C. P. R.	418
Dempsey, Pendergast v. 18 C. P. R.	198
Denke, Marvin v. 3 Law Rec.	93
Dennison v. Lawrence, 29 C. P. R.	176
Dennison v. Steinhardt, 1 Law Rec.	150
Denny v. Horton, 3 C. P. R.	255
Denton, Bowers v. 34 C. P. R.	12
Denton, Smith v. 38 C. P. R.	342

	Page
Denver & R. G. R. R. Co., Clifford v. 38 C. P. R.	196
De Pennevet, Ertell v. 14 C. P. R.	336
Dept. of Buildings v. Dick, 1 Law Rec.	250
Depue, in re, 37 C. P. R.	121
Derby, Henry v. 11 C. P. R.	106
DeRussy, Estate of Emily L., 20 C. P. R.	270
De Silva v. Flynn, 9 C. P. R.	426
DeSilver v. Holder, 6 C. P. R.	121
DeSilver v. Holden, 11 C. P. R.	404
Dessar, Flachtwanger v. 17 C. P. R.	119
DeStuckle v. The Tehuantepec Railway Co., 3 C. P. R.	410
Devender, Order Germania v. 6 C. P. R.	161
DeVivier v. Smith, 6 C. P. R.	394
DeVinney, Wildoick v. 38 C. P. R.	186
Devlin v. Hinman, 29 C. P. R.	127
Devlin, Wyckoff v. 8 C. P. R.	138
Dewsnap, Monolithic Drain & Conduit Co., 25 C. P. R.	380
Dewey, American Mortgage Co. v. 35 C. P. R. ...	48
DeWitt v. Greener, 11 C. P. R.	327
DeWitt v. Gunn, 24 C. P. R.	406
Deuterman v. Wilson, 15 C. P. R.	411
Dithredge Flint Glass Co., Rothschild v. 22 C. P. R.	314
Dichman, Sprigg v. 3 Law Rec.	63
Dickel, Antony v. 29 C. P. R.	219
Dickel, Cornwell v. 6 C. P. R.	416
Dickenson v. Brown, 37 C. P. R.	84
Dickinson v. Hoes, 33 C. P. R.	101
Dickenson v. The Mayor, 3 C. P. R.	93
Dickey, Peck v. 23 C. P. R.	210
Dickie v. Austin, 4 C. P. R.	123
Dickson Mfg. Co. Safety Steam Generator Co. v. 21 C. P. R.	329
Didsbury v. Van Tassel, 18 C. P. R.	372
Diecks' Pharmaceutical Extract Co., Beaumont v. 5 C. P. R.	274

	Page
Dieffenbach v. Roch, 16 C. P. R.	172
Diefendorf, Coon v. 8 C. P. R.	293
Diehl v. Lambart, 9 C. P. R.	267, 347
Dietlin v. Egan, 22 C. P. R.	398
Diestel, Hugin v. 2 Law Rec.	191
Dietz v. Herrmann, 1 Law Rec.	236
Dienst v. McCaffrey, 24 C. P. R.	288
Dildine, Kerr v. 14 C. P. R.	176
Dildine, Kerr v. 20 C. P. R.	366
Dillon, Clark v. 4 C. P. R.	245
Di Lorenzo v. Dragone, 28 C. P. R.	102
Di Lorenzo v. Di Lorenzo, 34 C. P. R.	105
Dimick v. Cooley, 3 C. P. R.	141
Dimock, Matter of, 24 C. P. R.	312
Dinan v. Coneys, 23 C. P. R.	157
Distilling & Cattle Feeding Co., American Dis- tributing Co. v. 24 C. P. R.	245
District Court, etc., People ex rel. Reynolds Card Mfg. Co. v. 13 C. P. R.	134
Ditmar, Sommers v. 2 Law Rec.	117
Dittrich, Matter of 38 C. P. R.	210
Dixon v. Woodward, 11 C. P. R.	215
Dabeitz, Blum v. 33 C. P. R.	290
Dock, Estate of, 7 C. P. R.	237
Dock v. South Bkl'n Saw Mill Co., 6 C. P. R.	144
Doctor v. Schnepf, 7 C. P. R.	144
Dodd v. The N. Y. Recorder Co., 1 Law Rec. ...	244
Dode v. Manhattan Railway Co., 23 C. P. R. ...	180
Dodge v. Albers, 39 C. P. R.	89
Dodge v. Johnson, 9 C. P. R.	339
Dodge v. Lawson, 22 C. P. R.	112
Dodge, Wilcox v. 17 C. P. R.	248
Doelger v. O'Rourke, 12 C. P. R.	254
Doem, Moffett, v. 8 C. P. R.	85
Doherty, Brown v. 37 C. P. R.	212
Doherty v. Matsell, 9 C. P. R.	103
Doherty v. Matsel, 11 C. P. R.	392
Dolbear v. Stout, 21 C. P. R.	359

	Page
Dolan v. Davison, 25 C. P. R.	403
Dollard v. American Surety Co., 39 C. P. R.	176
Dolliver v. American Swan Boat Co., 31 C. P. R.	94
Dolz v. Atlantic & Gulf Stream Transportation Co., 3 C. P. R.	162
Donald v. Elliott, 24 C. P. R.	190
Dondiro v. Dondiro, 3 Law Rec.	253
Donnell v. Magnolia M. Co., 1 Law Rec.	91
Donnelly, Estate of, 1 Law Rec.	140
Donnelly, Jordan v. 19 C. P. R.	413
Donner v. Ogilvie, 12 C. P. R.	399
Donohue, Schrick v. 34 C. P. R.	24
Donovan v. Cornell, 8 C. P. R.	283
Donovan v. Cornell, 9 C. P. R.	222
Donovan, Johnston v. 12 C. P. R.	315
Donovan, People ex rel, Lower v. 23 C. P. R.	1
Dooley v. O'Gorman, 27 C. P. R.	345
Dooley, People v. 33 C. P. R.	77
Doran, Wilson v. 15 C. P. R.	96
Doremus, Todd v. 21 C. P. R.	74
Dorin & Wright Co., Talbot v. 18 C. P. R.	304
Dorlan v. Wilson, 9 C. P. R.	69
Dorr v. Mills, 3 C. P. R.	7
Dorschel, Mohr v. 15 C. P. R.	22
Dorsey v. Pike, 13 C. P. R.	147
Do Sim, Burrell v. 24 C. P. R.	243
Doty, Flour City National Bank v. 11 C. P. R. ...	3
Douce, in re, 7 C. P. R.	426
Dounce, Potts v. 33 C. P. R.	303
Dbugan v. Cohen, 13 C. P. R.	295
Douglass v. Haberstro, 2 C. P. R.	186
Douglass v. McDermott, 1 Law Rec.	150
Douglas v. Mercantile Supply Co., 1 Law Rec. ..	216
Douglass v. Meyer, 22 C. P. R.	345
Doughliss v. Atwell, 3 C. P. R.	80
Dowd v. Pfisterer, 2 Law Rec.	44
Downey v. Clute, 12 C. P. R.	435
Downey v. Shea, 1 Law Rec.	234

	Page
Downs v. Farley, 12 C. P. R.	119
Downs et al, Executors, Higgins v. 34 C. P. R. . .	85
Dowson, Roeber v. 14 C. P. R.	354
Doying, Baldwin v. 5 C. P. R.	300
Doying, Candee v. 5 C. P. R.	92
Doying, First National Bank of Northampton v. 11 C. P. R.	61
Doyle v. Doyle, 4 C. P. R.	265
Dragone, Di Lorenzo v. 28 C. P. R.	102
Drake, Baxter v. 1 C. P. R.	225
Drake, Buckley v. 9 C. P. R.	336
Drake v. Drake, 11 C. P. R.	77
Drake Hardwood Lumber Co. v. Ackerman, 1 Law Rec.	244
Drake v. Weinman, 24 C. P. R.	323
Dreisler v. Dry Dock & E. Broadway R. R., 1 Law Rec.	118
Driscoll v. Driscoll, 1 Law Rec.	222
Dreyfus, Greismann v. 4 C. P. R.	32
Dr. Jaeger's Sanatary Woolen System Co. v. LeBoutillier, 22 C. P. R.	7
Droege v. Baxter, 32 C. P. R.	354
Dry Dock, East B'y. & B. R. R. Co., Glassberg v. 12 C. P. R.	50
Dryer v. Sexsmith, 10 C. P. R.	29
Dubal Watch Case Manf'g. Co. v. Keystone Watch Case Man'f'g. Co., 23 C. P. R.	44
DuBois, Claflin v. 13 C. P. R.	234
DuBois, Claflin v. 14 C. P. R.	290
DuBois v. Union Dime Savings Institution, 25 C. P. R.	288
Duche v. Buffalo Grape Sugar Co., 2 C. P. R. . .	268
Dudgeon, Gates v. 33 C. P. R.	317
Dudley v. Brinckerhoff, 13 C. P. R.	92
Dudley v. Congregation of Third Order of St. Francis, 22 C. P. R.	380
Dudley v. Press Publishing Co., 17 C. P. R.	267
Duer v. Noes, 1 Law Rec.	88

	Page
Duffie, Younger v. 5 C. P. R.	84
Duffy v. Brokaw, 2 Law Rec.	217
Duffy, Brokaw v. 31 C. P. R.	342
Duffy, Carynham v. 20 C. P. R.	81
Duffy v. Dawson, 22 C. P. R.	235
Duffy, Estate of, 3 C. P. R.	229
Duffy, McKenna v. 22 C. P. R.	336
Duffy v. Seaman's Bank. 1 Law Rec.	133
Duffy, Smith v. 8 C. P. R.	419
Duggan, in re, 8 C. P. R.	377
Duggin, Metropolitan Elevated R. R. Co. v. 19 C. P. R.	255
Dumars, Boyce v. 37 C. P. R.	181
Dun, First Nat'l Bank of Oswego v. 4 C. P. R.	378
Dun, Kranz v. 8 C. P. R.	403
Dun, Second Nat'l. Bank of Oswego v. 4 C. P. R.	378
Duncan v. Guest, 2 C. P. R.	275
Dunham v. Dunham, 34 C. P. R.	141
Dunham, Keller v. 37 C. P. R.	158
Dunham v. Reilly, 15 C. P. R.	227
Dunham, Rineland v. 2 C. P. R.	32
Dunlop v. Gill, 3 Law Rec.	152
Dunlop & Co. v. Simis, 3 Law Rec.	29
Dunn, Estate of, 1 Law Rec.	173
Dunn, in re, 29 C. P. R.	243
Dunn, Jaffe v. 3 Law Rec.	216
Dunn v. Neurther, 22 C. P. R.	116
Dunn, President etc. of the Manhattan Co. v. 13 C. P. R.	166
Dunn, Rothenberg v. 3 Law Rec.	216
Dunn, Samuels v. 3 Law Rec.	216
Dunn, Second National Bank of Oswego v. 2 C. P. R.	259
Dunn, Semel v. 28 C. P. R.	206
Dunn, Semil v. 3 Law Rec.	216
Dunn, Sheriff v. Arkenburgh, 31 C. P. R.	67
Dunn, Sheriff, Einstein v. 32 C. P. R.	64
Dunn, Simon v. 3 Law Rec.	216

	Page
Dunn v. Wehler, 1 Law Rec.	230
Dunn, Wustenberg, 2 Law Rec.	1
Dunne v. American Surety Co., 29 C. P. R.	59
Dunne, Stein v. 38 C. P. R.	328
Duparquet v. Fairfield, 15 C. P. R.	257
Dupignac v. Dugignac, 12 C. P. R.	251
Durant v. Abendroth, 8 C. P. R.	87
Durant, Abendroth v. 9 C. P. R.	446
Durant v. Abendroth, 13 C. P. R.	434
Durant v. Abendroth, 15 C. P. R.	36
Durant v. East River Electric Light Co., 15 C. P. R.	193
Durant Land Improvement Co. v. East River Electric Co., 17 C. P. R.	224
Durant Land Improvement Co. v. Thompson- Houston Electric Co., 23 C. P. R.	29
Durant, Hurlburt v. 2 C. P. R.	115
Durant v. Pierson, 19 C. P. R.	203
Durham v. Chapin, 26 C. P. R.	248
Durkee, Harris v. 5 C. P. R.	376
Dusenbury v. Dusenbury, 1 C. P. R.	292
Dusenbury v. Dusenbury, 4 C. P. R.	126
Dusenbury, Hyatt v. 12 C. P. R.	152
Duston, Sutorius v. 20 C. P. R.	241
Dutcher, Mason v. 24 C. P. R.	345
Duval v. Busch, 13 C. P. R.	366
Duval v. Busch, 14 C. P. R.	6
Duyckinck v. N. Y. Elevated R. R. Co., 5 C. P. R.	22
Dwinelle v. Eddy, 5 C. P. R.	45
Dwyer, Greenbaum v. 4 C. P. R.	276
Dwyer, in re, 37 C. P. R.	74
Dwyer, People ex rel. Negus v. 1 C. P. R.	484
Dwyer, People ex rel. Negus v. 2 C. P. R.	379
Dwyer v. Slattery, 39 C. P. R.	241
Dyett v. Seymour, 13 C. P. R.	127

E

	Page
Earle, N. Y. Commercial Co. v. 2 Law Rec.	11
Earle v. Earle, 6 C. P. R.	171
Early v. Early, 8 C. P. R.	68
Eagan v. Lynch, 3 C. P. R.	236
Eagan v. Moore, 2 C. P. R.	300
Egan, People ex rel. v. Columbia Club, 20 C. P. R.	319
Eagers v. Manhattan R. R. Co., 21 C. P. R.	403
Eagleton M'f'g. Co., Bates v. 10 C. P. R.	218
Eagleton, Newcombe v. 2 Law Rec.	6
Eames, Eldert v. 17 C. P. R.	413
Earle, Rogers v., 23 C. P. R.	220
East Lake Woolen Co., Cremins v. 25 C. P. R.	365
Easton, Knaggs v. 38 C. P. R.	485
Easton, Estate of, 1 Law Rec.	144
Easton, Estate of, 2 Law Rec.	158
Easton Co. v. Buck, 2 Law Rec.	103, 104
Easton v. Cardwell, 11 C. P. R.	301
East River Electric Light Co., Durant v. 15 C. P. R.	193
East River Electric Co., Durant Land Improvement Co. v. 17 C. P. R.	224
East River Savings Inst'n., Steiner v. 32 C. P. R.	42
Eastern & Western Railway Co., Burgoyne v. 19 C. P. R.	384
Eastman and Mandeville Co., Wilson v. 18 C. P. R.	267
Eberlin, St. John v. 3 Law Rec.	155
Eddy v. Co-Operative Dress Ass'n., 3 C. P. R.	127, 434, 442
Eckert v. Gallien, 29 C. P. R.	265
Ebling Brewing Co. v. Adler, 39 C. P. R.	118
Edison Electric Illuminating Co., Miller v. 35 C. P. R.	246
Edison Electric Ill. Co. v. Halbfleisch Co., 38 C. P. R.	361
Edmunds, Pipegras v. 23 C. P. R.	241
Edson, Roosevelt v. 7 C. P. R.	5

	Page
Edwards, Hackett v. 27 C. P. R.	99
Edy, Dwinelle v. 5 C. P. R.	45
Eddy, Shepard v. 15 C. P. R.	403
Effray v. Masson, 22 C. P. R.	59
Egan, Diekin v. 22 C. P. R.	398
Eggleston v. Beach, 19 C. P. R.	288
Eggers v. Ranner, 1 Law Rec.	117
Ehrich, O'Hara v. 19 C. P. R.	72
Eichinger, Cowdrey v. 8 C. P. R.	203
Eidlitz, Kierman v. 37 C. P. R.	264
Eighme v. Strong, 15 C. P. R.	119
Eighth Ward Bank of Brooklyn, Courtney v. 25 C. P. R.	157
Eilitz v. Eilitz, 1 Law Rec.	219
Einstein v. Dunn, Sheriff, 32 C. P. R.	64
Eiseman, Cunningham v. 4 C. P. R.	220
Eisenberg v. Lape, 39 C. P. R.	95
Eisenlord v. Clum, 17 C. P. R.	147
Eisler, Mayor &c. v. 2 C. P. R.	128
El Tazi v. Stein, 20 C. P. R.	125
Eldert v. Eames, 17 C. P. R.	413
Eldred, Gardener v. 21 C. P. R.	221
Electric Heat Regulator Co. v. Foster, 25 C. P. R.	223
Ellensohn v. Haselbach, 25 C. P. R.	345
Ellenshon v. Keys, 25 C. P. R.	353
Eleventh Ward Bank v. Heather, 29 C. P. R.	90
Eleventh Ward Bank v. N. Y. & N. J. Fireproof- ing Co., 31 C. P. R.	106
Elias, Schwab v. 2 C. P. R.	340
Elias v. Schweier, 27 C. P. R.	186
Elkins, Matter of, 26 C. P. R.	18
Elliott, Donald v. 24 C. P. R.	190
Elliott, Harding v. 24 C. P. R.	432
Elliott, Harding & Tomsen v. 25 C. P. R.	294
Elliott, Lenicky v. 7 C. P. R.	82
Ellis, Columbus, Hocking Valley & Toledo R. R. Co. v. 19 C. P. R.	66
Ellis, Maas v. 12 C. P. R.	323

	Page
Ellis v. Taylor, 3 Law Rec.	126
Elliot et al. Executors, Harris v. 31 C. P. R.	42
Ellston, Harding v. 19 C. P. R.	252
Ellsworth v. Woolsey, 26 C. P. R.	339
Elwin v. Routh, 1 C. P. R.	131
Emanuel v. Cohen, 2 Law Rec.	69
Emanuel v. La Compagnie &c. de Vischy, 16 C. P. R.	188
E. M. Boynton Saw & File Co. in re, 6 C. P. R. ..	342
Emerich, Clute v. 16 C. P.	123
Emerick v. Sexton, 1 Law Rec.	190
Emerson, Colberg v. 23 C. P. R.	337
Emery, Estate of, 13 C. P. R.	365
Emery v. Galvin, 3 Law Rec.	1
Emery, Jones v. 1 C. P. R.	338
Emmett, Richardson v. 33 C. P. R.	50
Empire D. F. Co. v. Chatham Natl. Bank, 3 Law Rec.	111
Empire Feed Co. v. Chatham Natl. Bank, 27 C. P. R.	228, 273
Empire State Ins. Co., Lewis v. 23 C. P. R.	295
Empire State Surety Co., Gansevoort Bank, 39 C. P. R.	10
Emslie, Campbell v. 38 C. P. R.	465
Ender, Estate of, 1 Law Rec.	173
Enders v. Sullivan, 1 Law Rec.	47
Enell, Kleinpeter v. 2 C. P. R.	21
Engle v. Fischer, 6 C. P. R.	307
Engle v. Fischer, 9 C. P. R.	318
Englefield v. Stern, 18 C. P. R.	63
Engleman v. Singer Mfg. Co., 1 Law Rec.	237
English v. Kimball, 2 Law Rec.	17
Enright v. Franklin Publishing Co., 28 C. P. R. ...	32
Ensign, Cabot v. 13 C. P. R.	89
Ensign v. Nelson, 14 C. P. R.	436
Ehstein, Marks v. 13 C. P. R.	293
Epstein, Strohn v. 6 C. P. R.	36
Epstein, Tefft v. 17 C. P. R.	168

	Page
Equitable Life Ass. Soc. v. Hughes, 18 C. P. R. . . .	119
Equitable Life Assurance Soc. v. Hughes, 19 C. P. R.	166, 326
Equitable Life Ins. Co., People v. 37 C. P. R. . . .	322
Equitable Life Ins. Co., Sibley v. 15 C. P. R. . . .	316
Equitable Natl. Bank, McCreary Realty Corp. v. 38 C. P. R.	271
Equitable Mutual Fire Ins. Corp., State of N. Y. v. 25 C. P. R.	210
Equitable Life Assurance Soc. v. Olyphant, 19 C. P. R.	21
Equitable Life Insurance Society v. Ohlsen, 28 C. P. R.	226
Erickson v. Poey, 5 C. P. R.	379
Erie Preserving Company, Martin v. 24 C. P. R. . .	424
Erie Railway Co., Burghen v. 39 C. P. R.	201
Erie Transfer Co., Chandler v. 19 C. P. R.	385
Erie Transfer Co., Parry v. 22 C. P. R.	178
Erkenbrach v. Erkenbrach, 5 C. P. R.	184
Ernst v. Metropolitan Street R. R., 1 Law Rec. . .	111
Ertell v. De Pennevet, 14 C. P. R.	336
Erwin v. Erwin, 18 C. P. R.	11
Essex Co. Natl. Bank v. Johnson, 21 C. P. R. . . .	321
Ess v. Henry Elias Brewing Co., 2 Law Rec. . . .	28
Ess v. Toplanyi, 4 C. P. R.	173
Estate of Havemeyer, 25 C. P. R.	59
Estate of Laytin, 25 C. P. R.	186
Estate of Lichtenstein, 25 C. P. R.	301
Euling, Sander v. 8 C. P. R.	166
Evans v. Crane, 12 C. P. R.	445
Evans v. Ferguson, 10 C. P. R.	57
Evans v. Silberman, 1 Law Rec.	51, 65
Evening Post Publishing Co., Ball v. 12 C. P. R. .	4
Everall v. Lossen, 7 C. P. R.	112
Excelsior Gas Light Co., People v. 8 C. P. R. . . .	390
Excelsior Steam Power Co. v. Cosmopolitan Pub. Co., 24 C. P. R.	93
Exstein v. Robertson, 17 C. P. R.	23

F

	Page
Faber, Leonard v. 28 C. P. R.	18
Faddon v. Schwinge, 1 Law Rec.	186
Fagan v. Belding, 3 Law Rec.	222
Fagan v. McDonnell, 37 C. P. R.	335
Fagan v. Strong, 17 C. P. R.	438
Fagan v. Strong, 19 C. P. R.	88
Fair v. Mevey, 28 C. P. R.	245
Fairbank v. Blant, 24 C. P. R.	334
Fairchild, Titus v. 4 C. P. R.	418
Fairfield, Duparquet v. 15 C. P. R.	257
Fairman v. Brush, 21 C. P. R.	155
Falk, Seligman v. 13 C. P. R.	77
Faller v. Ranger, 34 C. P. R.	23
Falvey, Tracy v. 34 C. P. R.	189
Fanning v. Supreme Council, Catholic Mutual Benefit Ass'n. 32 C. P. R.	82
Farace v. Farace, 1 C. P. R.	419
Farley v. Manhattan Ry. Co., 38 C. P. R.	459
Farley, Downs v. 12 C. P. R.	119
Farmers & Drovers Bank, Koehler v. 14 C. P. R.	71
Farmers & Drovers National Bank, Koehler v. 17 C. P. R.	307
Farmers Loan & Trust Co. v. Bathgate, 1 Law Rec.	65
Farmers Loan & Trust Co. v. Bankers and Mer- chants Telegraph Co., 11 C. P. R.	307
Farmers Loan & Trust Co., Brown v. 18 C. P. R.	131
Farmers Loan & Trust Co., McGillicuddy v. 28 C. P. R.	381
Farmers Loan & Trust Co., Starbuck v. 2 Law Rec.	106
Farmers Loan & Trust Co. v. United Lines Tele- graph Co., 14 C. P. R.	187
Farmers National Bank of Annapolis v. Under- wood, 25 C. P. R.	95

	Page
Farmers & Merchants Natl. Bank of Buffalo v. Rogers, 15 C. P. R.	250
Farmers Natl. Bank of Rome v. Williams, 9 C. P. R.	212
Farmer Type Founding Co., Smith v. 26 C. P. R.	141
Farnsworth v. Halstead, 18 C. P. R.	227
Farrell v. Amberg, 23 C. P. R.	434
Farrell v. Manhattan St. Railway, 30 C. P. R.	119
Farrington v. American Loan & Trust Co., 18 C. P. R.	135
Farrington v. Root, 24 C. P. R.	196
Farthing, White's Bank of Buffalo, v. 9 C. P. R.	64
Fatman v. Fatman, 22 C. P. R.	149
Favilla v. Moretti, 18 C. P. R.	388
Fay, Patrick, Estate of, 1 Law Rec.	18
Fayerweather v. Ritch, 27 C. P. R.	324
Fayerweather v. Tucker, 18 C. P. R.	276
Fayhs' Watch Case Co., Ruger v. 20 C. P. R.	204
Fearing v. Cornish, 10 C. P. R.	77
Feely v. Manhattan R. R. Co., 6 C. P. R.	414
Feeley, Wallace v. 1 C. P. R.	126
Feig v. Wray, 3 C. P. R.	159
Feitner, American Thread Co. v. 30 C. P. R.	398
Feitner, People ex rel. Washington Building Co. v. 31 C. P. R.	22
Feist, Barron v. 37 C. P. R.	391
Feist v. Third Ave. R. R. Co., 25 C. P. R.	257
Feldman v. Grand Lodge of American Workmen, 22 C. P. R.	165
Felman, Keller v. 23 C. P. R.	37
Felt v. Kirkpatrick, 3 Law Rec.	223
Felt v. Nichols, 2 Law Rec.	194
Fenlon v. Dempsey, 15 C. P. R.	393
Fenlon v. Dempsey, 17 C. P. R.	388
Fenn, Estate of, 8 C. P. R.	206
Fennell, Wassinger v. 13 C. P. R.	286
Fenouillet, Mertz v. 26 C. P. R.	179
Feracca v. Miller Brewing Co., 39 C. P. R.	116

	Page
Fere, Latteman v. 11 C. P. R.....	217
Ferguson, Carter v. 20 C. P. R.....	21
Ferguson, Evans v. 10 C. P. R.....	57
Ferguson v. Wooley, 9 C. P. R.....	236
Fernbacher, Estate of, 8 C. P. R.....	308, 349
Ferris, Armstrong Mfg. Co. v. 16 C. P. R.....	265
Ferris v. Hard, 15 C. P. R.....	171
Ferris, New Haven Web. Co. v. 16 C. P. R.....	265
Ferris v. Plummer, 13 C. P. R.....	389
Fessenden v. Blanchard, 14 C. P. R.....	277
Fetchman v. Davenport, 8 C. P. R.....	220
Fichtier, Gregory v. 21 C. P. R.....	1
Field v. Field, 5 C. P. R.....	34
Fields, Stringfield v. 7 C. P. R.....	356
Fifield, Bostwick v. 4 C. P. R.	79
Fifth Ave. R. R. Co., Mengis v. 24 C. P. R.....	131
Finan, Segelke v. 15 C. P. R.....	1
Finck, McCue v. 2 Law Rec.	125
Finck, Shipway v. 2 Law Rec.....	45
Fink v. Fraenkle, 20 C. P. R.....	402
Fink v. Manhattan Railway Co., 18 C. P. R.....	141
Finkel v. Kohn, 3 Law Rec.....	192
Finkemaur v. Dempsey, 8 C. P. R.....	418
Finn v. Mehrbach, 30 C. P. R.....	242
Fireman's Ins. Co., People ex rel. v. Justices of City Court of New York, 19 C. P. R.....	418
First National Bank v. Am. Exc. Nat'l Bank, 30 C. P. R.....	298
First Nat'l Bank of Amsterdam v. Miller, 27 C. P. R.	167
First National Bank of Canandaigua v. Martin, 15 C. P. R.....	324
First National Bank of Chicago v. Reinitz, 16 C. P. R.....	307
First National Bank of Jersey City v. Lenk, 18 C. P. R.....	209
First National Bank of Marietta v. Bushwick Chemical Works, 17 C. P. R.....	229

	Page
First National Bank of Northampton v. Doying, 11 C. P. R.....	61
First Nat'l Bank of Oswego v. Dunn, 4 C. P. R..	378
First Nat'l Bank of Olean, Willover v. 10 C. P. R.	80
First Nat'l Bank of Paterson v. Nat'l Broadway Bank, 2 Law Rec.....	30
Fire Association of Philadelphia, Williams v. 39 C. P. R.....	283
First National Bank of Plainfield v. Ranger, 14 C. P. R.....	1
First Nat'l Bank of Pittsburgh, Kennedy v. 8 C. P. R.	399
First Nat'l Bank of Springfield, O. Cody v. 32 C. P. R.	148
Firnski v. Abrahams, 1 Law Rec.....	200
Fisch, Estate of, 2 Law Rec.....	6
Fishel, Michaels v. 31 C. P. R.	29
Fishel, Michael v. 32 C. P. R.....	310
Fischer v. Cohen, 27 C. P. R.....	139
Fischer, Engle v. 6 C. P. R.....	307
Fischer, Engle v. 9 C. P. R.....	318
Fischer, Haberstich v. 6 C. P. R.....	82
Fischer-Hansen v. Brooklyn Heights R. R. Co., 33 C. P. R.....	326
Fischer, Sturz v. 25 C. P. R.....	202
Fischer, Zimmerman v. 13 C. P. R.....	224
Fisher v. Fisher, 2 Law Rec.....	142
Fisher v. Fisher, 22 C. P. R.....	49
Fisk, Cassell v. 2 C. P. R.....	94
Fisk v. Fisk, 25 C. P. R.....	38
Fisk, Fogg v. 4 C. P. R.....	344
Fisk, In re, 7 C. P. R.....	169
Fisk v. Spring, 1 C. P. R.....	378
Fiske v. Twigg, 5 C. P. R.....	41
Fish v. Wing, 1 C. P. R.....	231
Fiss v. Campbell, 1 Law Rec.....	8
Fitch, Estate of, 29 C. P. R.....	63

	Page
Fitch, Matter of, 30 C. P. R.....	1
Fitchburg National Bank v. Bushwick Chemical Works, 13 C. P. R.....	155
Fitchett, Smith v. 15 C. P. R.....	207
Fithian, Estate of, 11 C. P. R.....	211
Fithian, Estate of Freeman J., 14 C. P. R.....	52
Fritze v. Pultz, 2 C. P. R.....	142
Fitzgerald, People ex rel. Clark v. 34 C. P. R....	56
Fitzgerald, People ex rel. Patrick v. 33 C. P. R.	128
Fitzgerald v. Quann, 1 C. P. R.....	273
Fitzgerald v. Quann, 15 C. P. R.....	139
Fitzmaller, Mertens v. 17 C. P. R.....	277
Fitz Patrick, George v. 25 C. P. R.....	383
Fitzsimmons v. Curley, 6 C. P. R.	156
Fitzsimmons v. Harrington, 1 C. P. R.....	360
Fitzsimmons, Matter of, 33 C. P. R.....	336
Flack, Arteaga v. 2 C. P. R.....	152
Flack v. State of New York, 5 C. P. R.....	286
Flack, Willmore v. 6 C. P. R.....	191
Flachtranger v. Deseir, 17 C. P. R.....	119
Flagg, Jerome v. 15 C. P. R.....	79
Flagg v. Cooper, 11 C. P. R.....	421
Flatow v. Von Bremson, 19 C. P. R.. 121, 125,	131
Flatow v. Von Bremsen, 20 C. P. R.....	150
Fleet v. Altman, 3 Law Rec.....	120
Fleming v. Humber & Co., 1 Law Rec.....	110
Fleming v. Tourgee, 21 C. P. R.....	297
Flin v. Central R. R. of N. J., 20 C. P. R.....	179
Flint Co., Geo. C. v. Kirchner, 19 C. P. R.....	368
Flood, Cain v. 21 C. P. R.....	116
Flour City National Bank v. Doty, 11 C. P. R....	146
Flyn v. Central Railway Co. of N. J., 23 C. P. ..	106
Flynn, De Silva v. 9 C. P. R.....	426
Flyn v. Lynch, 23 C. P. R.....	369
Flynn v. Westmayer, 14 C. P. R.....	130
Foehrenback v. Garritz, 3 Law Rec.....	9
Foehrenback, West Side Bank v. 29 C. P. R.....	383
Fogarty, Smith v. 6 C. P. R.....	366

	Page
Fogg, Estate of, 3 Law Rec.....	175
Fogg v. Fisk, 4 C. P. R.....	344
Foley, Jackson v. 31 C. P. R.....	161
Foley, Jr., v. Mercantile National Bank, 24 C. P. R.	249
Foley v. Stone, 18 C. P. R.....	190
Foley v. Stone, 15 C. P. R.....	224
Folensbee, Hough v. 20 C. P. R.....	111
Fantana v. Haskin Wood Vulcanizing Co., 24 C. P. R.	354
Foot & Thorne Glass Co., Cretean v. 31 C. P. R.	265
Ford, Paul v. 38 C. P. R.....	71
Forster, Bomeisler v. 27 C. P. R.	46
Foot v. Valentine, 14 C. P. R.....	332
Forbs, Heath v. 18 C. P. R.....	207
Forbs v. Musclow, 18 C. P. R.....	239
Forbes v. Spaulding, 8 C. P. R.....	135
Forrester v. Strauss, 21 C. P. R.....	166
Fortgang v. Milman, 1 Law Rec.....	73
Fort Miller Pulp and Paper Co. v. Bratt, 39 C. P. R.	373
Foster, Aaron v. 11 C. P. R.....	325
Foster v. Electric Heat Regulator Co., 25 C. P. R.	223
Foster v. Lee, 3 Law Rec.....	212
Foster, Peters v. 18 C. P. R.....	380
Foster, Williams v. 16 C. P. R.....	429
Foulks, Matter of, 18 C. P. R.....	175
Fourth Estate Co., Hamilton v. 28 C. P. R.....	262
Fourth National Bank, Warner v. 12 C. P. R....	187
Foutham v. Am. Boiler Co., 3 Law Rec.....	48
Fowler v. Callen, 4 C. P. R.....	412
Fowler v. Callan, 9 C. P. R.....	384
Fowler v. Fowler, 19 C. P. R.....	282
Fox, Anthony & Co. v. 31 C. P. R.....	136
Fox v. Brooks, 23 C. P. R.....	345
Fox v. Chapman, 38 C. P. R.....	83
Fox, Gordon v. 18 C. P. R.....	291
Fox, Lockwood v. 1 C. P. R.....	407

	Page
Fox v. Matthiessen, 24 C. P. R.....	285
Fox, Young v. 27 C. P. R.....	253
Foxwell, Lawrence v. 4 C. P. R.....	340, 357
Franco-Am. Trading Co., Southard v. 15 C. P. R.	112
Franco-American Trading Co., Seligman v. 17 C. P. R.	342
Frank v. Davis, 21 C. P. R.....	374
Frank v. Davis, 22 C. P. R.....	426
Francko, Fretcher v. 21 C. P. R.....	34
Frank v. Bush, 2 C. P. R.....	250
Frank, Cupter v. 4 C. P. R.....	53
Fraenkle, Fink v. 20 C. P. R.....	402
Frankel v. Hayes, 14 C. P. R.....	232
Frankhauser v. Frankhauser, 1 Law Rec.....	12
Franklin Bank Note v. Mackey, 28 C. P. R.....	93
Franklyn, Cunard v. 15 C. P. R.....	134
Franeklyn, Cunard v. 16 C. P. R.....	59
Franklin v. Logan, 3 Law Rec.....	91
Franklin National Bank, Werner v. 29 C. P. R..	272
Francis v. Union Pacific R. R., 3 Law Rec.....	31
Franklin Transportation Co., Kamber v. 39 C. P. R.	93
Franklin Publishing Co., Enright v. 28 C. P. R.	32
Fraser v. Granite State Provident Assn., 23 C. P. R.	390
Fraser v. Ward, 9 C. P. R.....	11
Fraser v. Work, 3 Law Rec.....	57
Frazier, Kelly v. 2 C. P. R.....	322
Freedman, Briggs v. 9 C. P. R.....	73
Freeman v. Thompson, 16 C. P. R.....	186
Freeman v. U. S. Electric Lighting Co., 20 C. P. R.	179
Freeman, Williams v. 12 C. P. R.....	334
Freefield, Order der Herman's Sohne v. 2 Law Rec.	108
French, Bassett v. 27 C. P. R.....	95
French, Byrne v. 3 C. P. R.....	180
French, Concord Granite Co. v. 3 C. P. R... 56,	445

	Page
French, Zacharias v. 24 C. P. R.....	88
Frenkel, Claflin v. 3 C. P. R.....	109
Fretcher v. Francko, 21 C. P. R.....	34
Freund, Stanton as Ex. v. 3 Law Rec.	58
Frey, Hopkins v. 22 C. P. R.....	416
Frey v. N. Y. C. & H. R. R. Co., 37 C. P. R.....	191
Frey v. Torrey, 32 C. P. R.....	386
Freyhan v. Wertheimer, 38 C. P. R.....	426
Fricke, Estate of, 4 C. P. R.....	177
Friedman, Matter of, 30 C. P. R.....	221
Friedman, Train v. 4 C. P. R.....	109
Friendly Pleasure Club, In re, 1 Law Rec.....	17
Fries v. Coar, 13 C. P. R.....	152
Frith, McCall v. 2 C. P. R.....	9
Frith, McCall v. 4 C. P. R.....	102
Frist v. Climmm, 6 C. P. R.....	30
Fritchie v. Holden, 19 C. P. R.....	84
Fritz v. St. George Vineyard Co., 30 C. P. R....	253
Fromme v. Grey, 25 C. P. R.....	119, 273
Froome v. Listler, 22 C. P. R.....	37
Fromer, Townsend v. 15 C. P. R.....	8
Frost v. Craig, 18 C. P. R.....	296
Frost v. Kopp, 13 C. P. R.....	377
Frost, Walden v. 7 C. P. R.....	242
Froschle, Estate of, 3 Law Rec.....	208
Frothingham v. Broadway & Seventh Ave. R. R. Co., 9 C. P. R.....	304
Frothingham, Gilbert v. 13 C. P. R.....	288
Frothingham, O. B., Estate of, 1 Law Rec.....	81
Frothingham v. Stillwell, 28 C. P. R.....	298
Fry v. Manhattan Railway Co., 23 C. P. R.....	99
Fuchs v. Cohn, 22 C. P. R.....	269
Fuechsel, Richards v. 5 C. P. R.....	430
Fuede v. Weissenhanner, 29 C. P. R.....	187
Funk v. Tribune Association, 4 C. P. R.....	408
Funke, Knoch v. 22 C. P. R.....	161
Fuller, In re, 16 C. P. R.....	412
Fuller & Warren Co., Penniman v. 22 C. P. R....	205

	Page
Fulton, Moffitt v. 22 C. P. R.	126
Furber v. McCarthy, 18 C. P. R.	69
Furber v. McCarthy, 20 C. P. R.	229
Fursman v. Pennace, 15 C. P. R.	340
Fusco v. Adams, 19 C. P. R.	48

G

Gabusha, Lanning v. 22 C. P. R.	16
Gadski-Tauscher v. Graff, 34 C. P. R.	25
Gaedeke, Reid v. 29 C. P. R.	212
Gaedeke, Reid v. 3 Law Rec.	213
Gaffney, Matter of, 38 C. P. R.	303
Gage, Hyde v. 11 C. P. R.	155
Gair v. Birmingham Co., 20 C. P. R.	233
Gains, In re, 25 C. P. R.	243
Galbraith, Paine Lumber Co. v. 29 C. P. R.	99
Gales v. Gales, 1 Law Rec.	225
Galle v. Tode, 21 C. P. R.	152, 147
Gallagher, Campbell v. 18 C. P. R.	90
Gallagher, Davis v. 29 C. P. R.	149
Gallagher v. Gallagher, 2 Law Rec.	134
Gallagher v. Keating, 29 C. P. R.	234
Gallagher v. Merrill, 26 C. P. R.	242
Gallagher v. Stevenson Brewing Co., 25 C. P. R.	107
Gallagher v. Wagner, 2 Law Rec.	47
Galligan v. Groten, 26 C. P. R.	78
Galligan v. The Sun Printing and Publishing Co., 28 C. P. R.	349
Gallien, Eckert v. 29 C. P. R.	265
Galls, Estate of, 29 C. P. R.	178
Gallowitz v. Bumford, 39 C. P. R.	24
Galway v. Hornthal, 23 C. P. R.	201
Ganghran v. Jones, 2 Law Rec.	65
Gannon v. McGuire, 30 C. P. R.	18

	Page
Gannon v. Myars, 11 C. P. R.	187
Gansevoort Bank v. Empire State Surety Co., 39 C. P. R.	10
Gans, Hosner v. 25 C. P. R.	101
Gans & Trumbridge v. 2 Law Rec.	71
Ganz v. Lancaster, 32 C. P. R.	300
Gardner, Briggs v. 21 C. P. R.	42
Gardner v. Cohen, 28 C. P. R.	67
Gardiner v. Eldred, 21 C. P. R.	221
Gardner v. Locke, 2 C. P. R.	252
Gardner, Sherwood v. 5 C. P. R.	239
Gardner v. Smith, 2 C. P. R.	420
Gardner v. The Roycrofters, 39 C. P. R.	148
Garland v. Van Rensselaer, 23 C. P. R.	208
Garrabanto v. Sullivan, 13 C. P. R.	196
Garrison v. Marie, 7 C. P. R.	113
Garrison, Seaton v. 38 C. P. R.	51
Garrity, Irving v. 4 C. P. R.	105
Garritz, Foehrenbach v. 3 Law Rec.	9
Garsden v. Woodward, 11 C. P. R.	215
Garson v. Brumberg, 23 C. P. R.	306
Garvey v. N. Y. Life Ins. & Trust Co., 14 C. P. R.	106
Garvey, Matter of, 28 C. P. R.	14
Gas Works Construction Co. v. Standard Gas Light Co., 13 C. P. R.	405
Gas Light Co. of Syracuse v. Rome, Watertown & Ogdensburg R. R. Co., 11 C. P. R.	239
Gast v. Tenny, 1 Law Rec.	198
Gates v. Dudgeon, 33 C. P. R.	317
Gates v. Canfield, 2 C. P. R.	254
Gates, Matter of, 31 C. P. R.	8
Gaul, Matter of, 35 C. P. R.	35
Gavein, Estate of, 15 C. P. R.	390
Gay v. Richmann Mantel Co., 31 C. P. R.	81
Gay v. Seibold, 3 C. P. R.	169
Gayard v. Texas Crude Oil & M. Co., 38 C. P. R.	351
Gearty, Wunnenberg v. 7 C. P. R.	393
Gebhard v. Parker, 18 C. P. R.	244

	Page
Gebhard v. Squire, 13 C. P. R.....	43
Gedney v. Gedney, 1 Law Rec.....	12
Gedney, Higgins v. 28 C. P. R.....	236
Gee, Estate of, 24 C. P. R.....	241
Gelder, Wildman v. 21 C. P. R.....	143
Geer v. Geer, 20 C. P. R.....	71
Geis v. Geis, 38 C. P. R.....	234
Geis, Mela v. 3 C. P. R.....	152
Gellar v. Baer, 12 C. P. R.....	433
Genet v. Delaware & Hudson Canal Co., 19 C. P. R.	82
Genet v. Delaware & Hudson Canal Co., 33 C. P. R.	14
Genet v. President, & Delaware & Hudson Canal Co., 12 C. P. R.....	443
Genet v. President of Delaware & Hudson Canal Co., 17 C. P. R.....	55
Genesee Valley Canal R. R. Co. v. Slaight, 14 C. P. R.....	420
Genenz v. DeForrest, 15 C. P. R.	145
Geoghegan, Kenny v. 9 C. P. R.....	378
George v. Fitz Patrick, 25 C. P. R.....	383
George, Estate of, 2 Law Rec.....	181
Geo. H. Hammond & Co., O'Loughlin v. 12 C. P. R.	170, 171
Geo. C. Flint Co., Kirchner v. 19 C. P. R.....	368
Germania Life Ins. Co., Leonard v. 23 C. P. R..	155
German Am. Bank, Burley v. 5 C. P. R.....	172
German Savings Bank, McIntyre v. 20 C. P. R.	209
German American Bank v. Champlain, 11 C. P. R.	452
Gerlack, Sallade v. 17 C. P. R.....	420
Gerth v. Gerth, 3 Law Rec.....	52
Gervais v. Chicago, Rock Island, etc., R. R. Co., 18 C. P. R.....	403
Gervais v. Chicago, Rock Island & Pacific R. R. Co., 20 C. P. R.....	95
Gescheidt v. Quirk, 5 C. P. R.....	38

	Page
Getter, Snelling v. 27 C. P. R.....	158
Getman v. Ingersol, 17 C. P. R.....	436
Getman, Wait v. 28 C. P. R.....	49
Gibbs, Hamilton v. 18 C. P. R.....	211
Gibbons, Estate of, 1 Law Rec.....	83
Gibson, etc., Co. v. Furman, 1 Law Rec.....	167
Gick v. Stumpf, 37 C. P. R.....	98
Gicquel, Hubbard v. 14 C. P. R.....	15
Gideon v. Dwyer, 1 Law Rec.....	164
Gieb, Seidman v. 19 C. P. R.....	359
Gifford v. Rising, 14 C. P. R.....	172
Gihon, Matter of, 29 C. P. R.....	403
Gilbert v. Ackerman, 29 C. P. R.....	93
Gilbert v. Frothingham, 13 C. P. R.....	288
Gilbert, Grange v. 10 C. P. R.....	98
Gilbert v. McKenna, 25 C. P. R.....	143
Gilbert, Pach v. 17 C. P. R.....	399
Gilbert, Pach v. 18 C. P. R.....	262
Gilbert, Pach v. 20 C. P. R.....	300
Gilbert, Race v. 10 C. P. R.....	1
Gilbert v. York, 12 C. P. R.....	345
Gill, Dunlap v. 3 Law Rec.....	152
Gillett v. Hilton, 11 C. P. R.....	108
Gilleran, James, In re, 15 C. P. R.....	406
Gillespie, A., In re v. Dry Dock & E. B'dway R. R., 1 Law Rec.....	148
Gillespie v. Klingman, 3 Law Rec.....	73
Gillig Printing Co., Publishers Printing Co. v. 25 C. P. R.....	327
Gillig v. Treadwell Co., 25 C. P. R.....	197
Gillies, Ward v. 19 C. P. R.....	40
Gillin v. Canary, 26 C. P. R.....	230
Gilton, People ex rel, Osborn v. 18 C. P. R.....	112
Gillon, People ex rel, Updyke v. 18 C. P. R.....	109
Gilman v. Byrnes, 10 C. P. R.....	46
Gilman, Estate of Nathaniel, 12 C. P. R.....	179
Gilman, Hall v. 33 C. P. R.....	283
Gilman v. Prentice, 11 C. P. R.....	310

	Page
Gilman v. Prentiss, 22 C. P. R.....	143
Gilman v. Tucker, 18 C. P. R.....	50
Gilman, Tucker v. 20 C. P. R.....	397
Gilman v. Tucker, 21 C. P. R.....	170
Gilmore, Barnes v. 6 C. P. R.....	286
Gilmore v. Hain, 21 C. P. R.....	102
Gilpin v. Daly, 20 C. P. R.....	91
Gilroy v. Badger, 29 C. P. R.....	396
Girsch Lith. Co., In re, 1 Law Rec.....	137
Glasberg v. Dry Dock, East Bdway. & B. R. R. Co., 12 C. P. R.....	50
Glasgow v. Tilton, 1 Law Rec.....	97
Glass, Van Allen v. 21 C. P. R.....	127
Gleason, Bank of Montreal v. 14 C. P. R.....	377
Gleason, Hommert v. 20 C. P. R.....	349
Gleason v. Thorn, 1 Law Rec.....	101
Gledhill, Wood v. 20 C. P. R.....	155
Glenny, Schwarmecke, Matter of, v 38 C. P. R...	344
Glines v. Supreme Sitting Order of Iron Hall, 22 C. P. R.....	437
Globe Electric Construction Co. v. Steinfield, 2 Law Rec.	8
Globe v. Rauch, 26 C. P. R.....	359
Globe Yarn Mills Co. v. Bilbrough, 22 C. P. R...	186
Glockner, Mundt v. 27 C. P. R.....	120
Glockner, Mundt v. 30 C. P. R.....	149
Goddard, Keating v. 8 C. P. R.....	377
Goddard v. Pardee Medicine Co., 16 C. P. R....	379
Godfrey, Hauselt v. 3 C. P. R.....	116
Godfrey, Hoyt v. 3 C. P. R.....	118
Godfrey v. Pell, 4 C. P. R.....	448
Goettling v. Biehler, C. P. R.....	324
Goelet v. Roe, 25 C. P. R.....	87
Goetz v. Mott, 15 C. P. R.....	11
Goetz v. Van Au, 12 C. P. R.....	104
Goff v. Bliss, 12 C. P. R.....	99
Goff v. Vedder, 12 C. P. R.....	358
Goff, Wohlman v. 15 C. P. R.....	39

	Page
Gold & Stock Telegraph Co., <i>Murphy v.</i> 18 C.	
P. R.	43
Goldberg, an Infant, <i>v. Elinsky</i> , 1 Law Rec.	107
Goldberg <i>v. Roberts</i> , 5 C. P. R.	96
Golden, <i>McNamara v.</i> 39 C. P. R.	83
Goldenberg <i>v. Zarinsky</i> , 37 C. P. R.	203
Goldfogle, <i>People ex rel. Baldwin v.</i> 23 C. P. R.	417
Goldmark <i>v. Magnolia</i> , 3 Law Rec.	115
Goldschmidt, <i>Orvis v.</i> 2 C. P. R.	314
Goldstein <i>v. Dry Dock R. & C. R. R.</i> , 1 Law Rec.	211
Goldstein <i>v. Guedalia</i> , 29 C. P. R.	214
Goldstine <i>v. Jordan</i> , 1 Law Rec.	169
Goldman <i>v. Kennedy</i> , 14 C. P. R.	392
Goldmark <i>v. Magnolia Anti-Friction Metal Co.</i> ,	
27 C. P. R.	419
Galvin, <i>Emery v.</i> 3 Law Rec.	1
Gomprecht, <i>Bittiner v.</i> 29 C. P. R.	300
Gougehmann <i>v. Whele</i> , 1 Law Rec.	43
Good, <i>Bell v.</i> 22 C. P. R.	317, 356
Goodenough, <i>McClure v.</i> 19 C. P. R.	191
Goodenough, <i>Metropolitan Addressing Co. v.</i> 21	
C. P. R.	268
Goodenough, <i>Mills v.</i> 18 C. P. R.	151
Goodfellow, <i>McCabe v.</i> 21 C. P. R.	65
Goodman <i>v. Alexander</i> , 31 C. P. R.	342
Goodman, <i>Davidson v.</i> 2 Law Rec.	24
Goodman, <i>Victor v.</i> 29 C. P. R.	263
Goodrich <i>v. McDonald</i> , 11 C. P. R.	147
Goodrich <i>v. McDonald</i> , 16 C. P. R.	233
Goodsell <i>v. Goodsell</i> , 34 C. P. R.	76
Goossen <i>v. Goossen</i> , 24 C. P. R.	213
Goodson Type Casting & Setting Machine Co.,	
White <i>v.</i> 24 C. P. R.	411
Goodstein, <i>Searing v.</i> 2 C. P. R.	464
Goodwin <i>v. Bunzl</i> , 6 C. P. R.	226
Goodwin, <i>Sandford v.</i> 20 C. P. R.	276 note
Gordon <i>v. Fox</i> , 18 C. P. R.	291
Gordon <i>v. Ryan</i> , 1 Law Rec.	165

	Page
Gorman, Bates v. 8 C. P. R.....	180
Gorman, Boyd v. 28 C. P. R.....	320
Gorman, Kempfer v. 22 C. P. R.....	34
Gorton Steamer Co. v. Spoffard, 5 C. P. R.....	116
Gorton v. U. S. & Brazil Mail S. S. Co., 20 C. P. R.	202
Goth v. Star Printing Co., 14 C. P. R.....	3
Gotham-Attucks Music Co., Greenwald v. 38 C. P. R.	494
Gotlchius v. McGoldrick, 24 C. P. R.....	293
Gottlieb v. Kaufman, 1 Law Rec.....	179
Gough, In re, 28 C. P. R.....	23
Gough v. Satterlee, 3 Law Rec.....	40
Gould, Deklyn v. 31 C. P. R.....	223
Gould, Jones v. 37 C. P. R.....	183
Gould, Manning v. 1 C. P. R.....	216
Gould, Manning v. 3 C. P. R.....	58
Gould, Martin v. 13 C. P. R.....	45
Gould, Matter of, 33 C. P. R.....	172
Gould v. Patterson, 22 C. P. R.....	230
Gould Roofing Co. v. Gildea, 1 Law Rec.....	9
Gould v. Simpson & Co., 1 Law Rec.....	66
Gouley, Merritt v. 20 C. P. R.....	43
Gourand, Powers v. 2 Law Rec.....	19
Gowing v. Levy, 22 C. P. R.....	10
Graff, Cornish v. 7 C. P. R.....	204
Graff, Gadeski-Tauscher v. 34 C. P. R.....	25
Graeffe v. Currie, 8 C. P. R.....	187
Grafton v. Union Ferry Co., 20 C. P. R.....	238
Grafton v. Union Ferry Co., 22 C. P. R.....	402
Graham v. Andrews, 24 C. P. R.....	263
Graham, Curtis v. 15 C. P. R.....	8
Graham v. Stirling Ins. Co., 19 C. P. R.....	452
Grand Lodge of United Workmen, Feldman v. 22 C. P. R.....	165
Grand Trunk R. R. Co., Kiefer v. 26 C. P. R....	147
Grand Trunk Railroad Co. of Canada, Roth- schild v. 19 C. P. R.....	53

	Page
Grange v. Gilbert, 10 C. P. R.....	98
Granger, Rowe v. 39 C. P. R.....	141
Granniss, Mutual Life Insurance Co. v. 39 C. P. R.	162
Granite State Provident Ass., Fraser v. 23 C. P. R.	390
Grant v. Birdsell, 2 C. P. R.....	422
Grant, Matter of, 27 C. P. R.....	21
Grant, People ex rel. Borst v. 10 C. P. R.....	173
Grant, People ex rel. Chatillon v. 10 C. P. R....	171
Grant, People ex rel. Clark v. 14 C. P. R.....	28
Grant, People ex rel. Clark v. 13 C. P. R.....	183
Grant, People ex rel. Cohen v. 11 C. P. R.....	55
Grant, People ex rel. Crane v. 13 C. P. R.....	209
Grant v. Crittendon, 13 C. P. R.....	123
Grant, People ex rel. Erlich v. 32 C. P. R.....	73
Grant, People ex rel. Higgins v. 19 C. P. R.....	318
Grant, People ex rel. Kiernan v. 10 C. P. R.....	172
Grant, People ex rel. Lust v. 10 C. P. R.....	158
Grant, People ex rel. MacDonald v. 10 C. P. R..	171
Grant, People ex rel. Monett v. 10 C. P. R.....	171
Grant, People ex rel. Post v. 13 C. P. R.....	305
Grant, People ex rel. Rodding v. 10 C. P. R....	174
Grant, Smith v. 11 C. P. R.....	354
Grant, People ex rel. Solomon v. 10 C. P. R.....	158
Grant, Wright v. 11 C. P. R.....	407
Graves v. Scoville, 12 C. P. R.....	155
Gray v. Lieben, 8 C. P. R.....	48
Gray, McDougal v. 15 C. P. R.....	237
Gray v. Rothschild, 13 C. P. R.....	359
Gray v. Rothschild, 14 C. P. R.....	320
Gray v. Ryle, 5 C. P. R.....	387
Gray v. Seeber, 17 C. P. R.....	327
Gray v. Seymour, 1 Law Rec.....	245
Graybill, Hamilton v. 26 C. P. R.....	184
Green v. Davies, 34 C. P. R.....	1
Greener, DeWitt v. 11 C. P. R.....	327
Green v. Griswold, 15 C. P. R.....	220

	Page
Green v. Hauser, 18 C. P. R.....	354
Greene v. Knox, 33 C. P. R.....	205
Green v. Martine, 1 C. P. R.....	129
Green v. Middlesex R. R. Co., 24 C. P. R.....	272
Green v. Middlesex Railway Co., 28 C. P. R.....	152
Greene v. N. Y. C. etc., R. R. Co., 2 C. P. R.....	427
Green, Ragsdale v. 28 C. P. R.....	229
Green, Ragsdale v. 29 C. P. R.....	50
Green, Schwartz v. 20 C. P. R.....	431
Green, Sherman v. 25 C. P. R.....	190
Green, Smith v. 8 C. P. R.....	163
Greene, Stine v. 32 C. P. R.....	222
Greenbaum v. Dwyer, 4 C. P. R.....	276
Greenfield, Pendergast v. 10 C. P. R.....	231
Greenpoint Ferry Co., Coster v. 5 C. P. R.....	146
Greenwich Ins. Co., Werbolowsky v. 5 C. P. R.	303
Greenwald v. Gotham-Attucks Music Co., 38 C. P. R.....	494
Gregg, Young v. 9 C. P. R.....	262
Gregory, Estate, In re, 25 C. P. R.....	71
Gregory v. Fichtier, 21 C. P. R.....	4
Gridley v. Gridley, 7 C. P. R.....	215
Greig v. Greig, 1 Law Rec.....	181
Greiner v. Hamburger, 11 C. P. R.....	67
Greismann v. Dreyfus, 4 C. P. R.....	32
Grey, Fromme v. 25 C. P. R.	116, 273
Grieff, Newman v. 3 C. P. R.	362
Griffin v. L. J. R. R. Co., 9 C. P. R.	84
Griffin, Ottman v. 17 C. P. R.....	185
Griffin, People ex rel. v. Ryder. 22 C. P. R.	388
Griffiths v. Metropolitan St. Ry Co., 32 C. P. R.	184
Griffiths v. Metropolitan Street R. R. Co., 33 C. P. R.	106
Griggs v. Day, 22 C. P. R.	146
Griggs v. Day 26 C. P. R.	190
Griggs v. Guise, 23 C. P. R.	46
Grimke, Morse v. 18 C. P. R.	37
Grinnel v. Sherman, 19 C. P. R.	139

	Page
Grindall v. DeLano, 21 C. P. R.	224
Griscomb Jr., Matter of, 2 Law Rec.	188
Griswold, Bonnell v. 8 C. P. R.	280
Griswold v. Caldwell & Bien, 25 C. P. R.	123
Griswold, Green v. 15 C. P. R.	220
Ground Hog Mining and Milling Co., Scherer v. 28 C. P. R.	231
Gross v. Block, 14 C. P. R.	314
Gross v. Clark, 1 C. P. R.	17, 464
Gross v. Dry Dock &c. R. R., 1 Law Rec.	118
Gross, Marks v. 18 C. P. R.	352
Gross, Martin v. 16 C. P. R.	235
Gross, Mark v. 23 C. P. R.	97
Grossman v. Supreme Lodge K. & Ladies of Honor, 16 C. P. R.	215
Grouse, Rosenthal v. 7 C. P. R.	135
Grout, Bourke v. 35 C. P. R.	84
Grout v. Williams, 34 C. P. R.	231
Groten, Galligan v. 26 C. P. R.	78
Grove, Estate of, 13 C. P. R.	267
Guilbert v. Saunders, 13 C. P. R.	220
Grow v. Snell, 4 C. P. R.	334
Grumme, Hafner & Schoner Furniture Co. v. 10 C. P. R.	176
Guilfoyle, in re, 1 Law Rec.	228
Guardian Fire and Life Insurance Co., Lewis v. 35 C. P. R.	20
Guedalia, Goldstein v. 29 C. P. R.	214
Gurnee, Estate of Mary, 1 Law Rec.	84
Guest, Duncan v. 2 C. P. R.	275
Guggenheimer v. Stephens, 17 C. P. R.	383
Guinan v. Allen, 29 C. P. R.	277
Guise, Griggs v. 23 C. P. R.	46
Guliano v. Whitenack, 24 C. P. R.	55
Gunn, DeWitt v. 24 C. P. R.	406
Gunning v. Baker, 3 Law Rec.	24
Gunter, Huntington v. 2 Law Rec.	127

	Page
Gurnby, Metropolitan Street Railway, v 30 C.	
P. R.	206
Gusstaf v. American Steamship Co. v. 4 C. P. R.	243
Gutta Percha Rubber Manufg. Co. v. Mayor & of	
Houston, 12 C. P. R.	326
Gutta Percha & Rubber Manuf. Co., Buckley v.	
3 C. P. R.	428
Gutta Percha & Rubber Mfg. Co. v. Mayor, 14 C.	
P. R.	19
Guyon v. Rooney, 17 C. P. R.	172
Gwalter v. New York Seal Plush and Tapestry	
Co., 22 C. P. R.	214

H

Haan & Co., K. M. v. Aeschlimann, 3 Law Rec...	7
Haan, Travis v. 39 C. P. R.	247
Hackett v. Edwards, 27 C. P. R.	99
Haas, Rouse v. 27 C. P. R.	146
Haberstro, Douglass v. 2 C. P. R.	186
Haberstich v. Fischer, 6 C. P. R.	82
Hackstaff v. Hackstaff, 24 C. P. R.	208
Hadley v. Petheal, 23 C. P. R.	216
Habler v. Bernharth, 17 C. P. R.	393
Hafner & Schoen Furniture Co. v. Grumme, 10	
C. P. R.	176
Haft, Janeway v. 22 C. P. R.	291
Hagan v. Sone, 32 C. P. R.	288
Hagemeyer, Merchants Natoinal Bank v. 25 C.	
P. R.	332
Hagemeyer, Executor, v. Saulpaugh, 34 C. P. R.	66
Hagerty v. Andrews, 4 C. P. R.	323
Haggerty v. McClellen, 35 C. P. R.	86
Hahl v. Sugo, 32 C. P. R.	265
Haigh, Bowery Savings Bank v. 13 C. P. R.	56

	Page
Haight v. Brisbin, 7 C. P. R.	152
Haight, Estate of David, 14 C. P. R.	357
Haight, in re, 11 C. P. R.	227
Haines, Agar v. 15 C. P. R.	6
Haines v. Scott, 1 Law Rec.	254
Hale, Bundick v. 4 C. P. R.	311
Hale, Congregational Unitarian Society v. 27 C. P. R.	303
Hale, Newcomb v. 4 C. P. R.	25
Haley v. Isaacs, 1 Law Rec.	104
Hall, as exr. v. Berton, 1 Law Rec.	125
Hall, Brennan v. 20 C. P. R.	434
Hall v. Brooks, 2 C. P. R.	198
Hall v. Conger, 7 C. P. R.	53
Hall v. Gilman, 33 C. P. R.	283
Hall, Hollender v. 18 C. P. R.	394
Hall, Hollender v. 19 C. P. R.	292
Hall, Manufacturers Natl. Bank v. 21 C. P. R. . .	131
Hall, Mullen v. 37 C. P. R.	188
Hall, Prior v. 13 C. P. R.	83
Hall, Sexton v. 15 C. P. R.	420
Hall, Snow-Church Co. v. 26 C. P. R.	274
Hall, Stephens v. 19 C. P. R.	37
Hall, Trenndlich v. 7 C. P. R.	62
Hall v. U. S. Reflector Co., 4 C. P. R.	148
Hallbeimer, Krauss v. 23 C. P. R.	317
Haulenbeck v. McGibbon, 20 C. P. R.	408
Hallenbeck, Van Gelder v. 15 C. P. R.	333
Hallenbeck, Venderzee v. 14 C. P. R.	99
Hallett v. Hallett, 24 C. P. R.	102
Hallett v. Metropolitan Messenger Co., 32 C. P. R.	346
Hallheimer, in re, 1 Law Rec.	51
Hallock v. Bacon, 21 C. P. R.	255
Halloran v. Morgan, 1 Law Rec.	52
Halstead, Farnsworth v. 18 C. P. R.	227
Halton, Mussinam v. 23 C. P. R.	400
Ham, Gilmore v. 21 C. P. R.	102
Hamm, Winter v. 5 C. P. R.	194

	Page
Hamburger, Greener v. 11 C. P. R.	67
Hamill, Malcolm v. 4 C. P. R.	221
Hamilton v. Fourth Estate Co., 28 C. P. R.	263
Hamilton v. Gibbs, 18 C. P. R.	211
Hamilton v. Graybill, 26 C. P. R.	184
Hamilton, Ibbottson v. 2 Law Rec.	57
Hamilton v. Manhattan Railway Co., 18 C. P. R.	164
Hammacher v. Morse, 15 C. P. R.	321
Hamersley, Estate of Louis C., 9 C. P. R.	293
Hammersley, Knapp v. 13 C. P. R.	258
Hampell v. Hampell, 1 Law Rec.	150
Hampton B. R. & L. Co. v. Sizer, 3 Law Rec....	151
Hancock National Bank v. White, 1 Law Rec....	213
Hancock v. Sears, 4 C. P. R.	255
Hand v. Rogers, 25 C. P. R.	254
Handlaar, Tausend v. 31 C. P. R.	170
Handley v. Newell, 1 Law Rec.	214
Hankin, Murray v. 3 C. P. R.	342
Hankinson v. Page, 12 C. P. R.	279
Hanley v. Brennan, 12 C. P. R.	147
Hann v. Barnegat and Long Beach Improvement Co., 7 C. P. R.	222
Hannaman v. Muckle, 20 C. P. R.	296
Hannibal & St. Jo. R. R. Co., Hurd v. 6 C. P. R.	386
Hanning v. Kempel, 2 Law Rec.	123
Hanover Natl. Bank, Moore v. 3 Law Rec....	86
Hansee v. Mead, 2 C. P. R.	175
Hansee, National Bank of Port Jervis v. 7 C. P. R.	351
Hanson, Stephenson v. 4 C. P. R.	104
Hanson, Stephenson v. 6 C. P. R.	43
Hanson v. Walsh, 38 C. P. R.	60
Hard, Ferris v. 15 C. P. R.	171
Harder v. Harder, 1 Law Rec.	180
Hardie v. Andrews, 13 C. P. R.	413
Harding v. Ellston, 19 C. P. R.	252
Harding v. Elliott, 24 C. P. R.	432
Harding, in re, 1 Law Rec.	135

	Page
Harding & Tamsen v. Elliott, 25 C. P. R.	294
Hardy, in re, 27 C. P. R.	174
Hardy v. Knickerbocker Trust Co., 28 C. P. R. ..	10
Harlem R. & P. C. R. Co. v. Arnow, 3 Law Rec.	46
Harlin, Venable v. 1 C. P. R.	215
Harlock v. LeBaron, 1 C. P. R.	168
Harlow, Risley, 35 C. P. R.	266
Harney v. Provident Savings Life Assurance Soc., 29 C. P. R.	315
Harnett v. Morris, 10 C. P. R.	223
Harnett v. Westcott, 14 C. P. R.	360
Harney, Sullivan v. 38 C. P. R.	345
Harris v. Cuff, 15 C. P. R.	104
Harris, Day v. 20 C. P. R.	255
Harris v. Durkee, 5 C. P. R.	376
Harris v. Elliot et al, executors, 31 C. P. R.	42
Harris, in re, 1 C. P. R.	162
Harris Manufg. Co., Childs v. 12 C. P. R.	11
Harris, McNamara v. 4 C. P. R.	76
Harris v. Mutual Life Ins. Co., 18 C. P. R.	195
Harris v. Mutual Life Ins. Co., 20 C. P. R.	192
Harris, Sander v. 20 C. P. R.	258
Harris v. Taylor, 3 Law Rec.	3
Harris v. Treu, 25 C. P. R.	93
Harrisburg Pipe Bending Co. v. Welsh, 27 C. P. R.	238
Harrigan, Blake v. 20 C. P. R.	424
Harrigan, Blake v. 19 C. P. R.	207
Harriman, Camp Mfg. Co. v. 26 C. P. R.	100
Harrison v. Harrison, 1 Law Rec.	223
Harrison, Jordan v. 13 C. P. R.	445
Harrington, Bachman v. 37 C. P. R.	56
Harrington v. Bayles, 33 C. P. R.	363
Harrington, Fitzsimmons v. 1 C. P. R.	360
Harsel, Arkman v. 5 C. P. R.	93
Hart v. Kip, 25 C. P. R.	205
Hart, Troy Printing Co. v. 1 C. P. R.	240
Hartford National Bank v. Beineke, 26 C. P. R.	226

	Page
Hartmetz, Ljungquist, 39 C. P. R.	140
Hartung, Estate of, 1 Law Rec.	21
Hartwig, Sather, Bk. Co. v. 3 Law Rec.	55
Hartwell, Mead v. 24 C. P. R.	217
Harvey v. Cullings, 35 C. P. R.	273
Harvey, Larocque v. 19 C. P. R.	109
Harway, Oakes v. 6 C. P. R.	357
Hascall v. King, 31 C. P. R.	207
Haselbach, Ellenshon v. 25 C. P. R.	345
Haseline, Lake v. 12 C. P. R.	309
Haskins, Estate of, 1 Law Rec.	77
Haskin Wood Vulcanizing Co. v. Fontana, 24 C. P. R.	354
Hass v. Swick, 23 C. P. R.	397
Hassler v. Turnbull, 10 C. P. R.	240
Hatch, Cunningham v. 23 C. P. R.	82
Hatch, Hoag v. 16 C. P. R.	117
Hatch v. Leonard, 31 C. P. R.	374
Hatch, Peet v. 13 C. P. R.	450
Hatfield v. Atwood, 15 C. P. R.	330
Hatfield, Baker v. 3 C. P. R.	303
Hatfield v. Malcolm, 23 C. P. R.	197
Hatfield v. Todd, 13 C. P. R.	265
Hatteman v. Leiman, 1 Law Rec.	256
Hatton, Estate of, 15 C. P. R.	293
Hauchild v. Hanchild, 3 Law Rec.	108
Haug, in re, Will of, 3 Law Rec.	146
Haug, Ruppert v. 1 C. P. R.	411
Haulenbeck v. Coenen, 20 C. P. R.	6
Hauseman, Schmalz v. 7 C. P. R.	414
Hauser, Bolt v. 19 C. P. R.	7, 310
Hausen, Green v. 18 C. P. R.	354
Hauselt v. Bonner, 17 C. P. R.	320
Hauselt v. Godfrey, 3 C. P. R.	116
Havens, Estate of, 24 C. P. R.	68
Haven's Relief Fund Society, Smith v. 37 C. P. R.	299
Havemeyer, Estate of, 1 Law Rec.	146
Havemeyer, Estate of, 25 C. P. R.	59

	Page
Havemeyer v. Havemeyer, 1 C. P. R.	448
Havemeyer Sugar Ref'g. Co. v. Taussig, 12 C. P. R.	247
Haviland, Will of, 1 Law Rec.	171
Hawes, Bauer v. 38 C. P. R.	273
Hawke v. American News Co., 24 C. P. R.	255
Hawks, Comr., N. Y. Contracting Co. v. 34 C. P. R.	14
Haxton, in re, 9 C. P. R.	197
Hay Foundry and Iron Works, Matter of, 27 C. P. R.	80
Hay v. Muller, 23 C. P. R.	321
Hayes, Browning v. 11 C. P. R.	223
Hayes v. Creighton, 19 C. P. R.	299
Hayes v. Davidson, 6 C. P. R.	330, 377
Hayes v. Davidson, 7 C. P. R.	46
Hayes v. O'Reilly, 8 C. P. R.	347
Hayes v. Second Ave. R. R. Co., 4 C. P. R.	84
Hayes v. Second Ave. R. R. Co., 5 C. P. R.	155
Haynes v Brooks, 8 C. P. R.	106
Haynes, Commercial Adv. Assn. v. 3 Law Rec. .	5
Haynes, Mechanical OrguINETTE Co. v. 39 C. P. R.	49
Hays, Frankel v. 14 C. P. R.	232
Hays, Peck v. 14 C. P. R.	110
Hays, Thalheimer v. 14 C. P. R.	232
Hayward, Hood v. 20 C. P. R.	47
Hayward v. Manhattan R. R. Co., 17 C. P. R.	155
Hayward v. McDonald, 7 C. P. R.	100
Hayward, Place v. 8 C. P. R.	352
Haywood v. Hood, 12 C. P. R.	421
Hazard v. Birdsall, 21 C. P. R.	304
Hazard, Simmons v. 23 C. P. R.	15
Healey, Journdan v. 22 C. P. R.	157
Healy v. Murphy, 21 C. P. R.	13
Healy v. Railway Co., 1 C. P. R.	15
Healeys, Will, in re, 29 C. P. R.	389
Health Department of N. Y. City v. Weeks, 27 C. P. R.	37

	Page
Hearmon, Estate of, 20 C. P. R.	8
Hearey, Longstreet v. 21 C. P. R.	16
Heath v. Forbes, 18 C. P. R.	207
Heath v. Hillier, 3 Law Rec.	194
Heather, Eleventh Ward Bank v. 27 C. P. R. ...	90
Hebron v. Woek, 34 C. P. R.	134
Hecht, Robertzky v. 3 C. P. R.	156
Heckla Consolidated Gold Mining Co. v. O'Neill 23 C. P. R.	143
Hecla Power Co. v. Hudson River Ore & Iron Co., 23 C. P. R.	341
Heckman v. Mackey, 13 C. P. R.	11
Hedden v. Nederburg, 20 C. P. R.	394
Hedden & Sons Co., Anderson v. 38 C. P. R.	140
Hedges v. Methodist Church, 2 Law Rec.	163
Heenan v. N. Y. W. S. & B. R. R. Co., 6 C. P. R.	348
Hegeman v. Starnes Realty Co., 38 C. P. R.	429
Hegerich v. Keddle, 5 C. P. R.	228
Hegewisch v. Silver, 23 C. P. R.	41
Heidelbach v. Kilpatrick, 3 C. P. R.	209
Heilman, Lazarus v. 2 C. P. R.	204
Hein v. Davidson, 5 C. P. R.	28, 391
Heim, Smoot v. 1 C. P. R.	208
Heine, Ash v. 3 Law Rec.	75
Heineman, Isbell-Porter Co. v. 37 C. P. R.	131
Heinsberg v. Milbury, 28 C. P. R.	179
Hellman, Sperry v. 20 C. P. R.	218
Hemmer v. Hustace, 14 C. P. R.	254
Hempstead, Church v. 27 C. P. R.	231
Henderson, in re, 28 C. P. R.	389
Henderson v. Manning, 5 C. P. R.	221
Henderson v. McNally, 28 C. P. R.	174
Henderson v. Scott, 6 C. P. R.	39
Henderson, Welde v. 10 C. P. R.	214
Hendricks v. Wolf, 14 C. P. R.	426
Henes v. Hoenack, 1 Law Rec.	238
Henlein, Iselin v. 7 C. P. R.	431
Henlein, Vietor v. 7 C. P. R.	67

	Page
Hennessy v. Sweeney, 28 C. P. R.	333
Henning v. Kirby, 2 Law Rec.	43
Henry Elias Brewing Co., Ess v. 2 Law Rec.	28
Henry v. Derby, 11 C. P. R.	106
Henry, Estate of John Griffiths, 9 C. P. R.	100
Henry v. N. Y. Lake Erie & Western R. R. Co. 19 C. P. R.	188
Henry Prouse Cooper Co., People ex rel. v. Kelly, 12 C. P. R.	414
Henry Prouse Cooper Co. v. O'Rourke, 11 C. P. R.	321
Henry, Simmons v. 12 C. P. R.	204
Hepburn v. Montgomery, 5 C. P. R.	244
Hepworth, Platt & Washburn Refining Co. v. 13 C. P. R.	122
Herald v. McBean, 27 C. P. R.	214
Herbage v. City of Utica, 14 C. P. R.	79
Herbert Booth King Pub. Co., Clark v. 29 C. P. R.	229
Herbert v. Lawrence, 21 C. P. R.	336
Herbert, Meyers v. 22 C. P. R.	216
Herman, Moffat v. 17 C. P. R.	357
Herdtfelder, Lichtenburg v. 5 C. P. R.	426
Herman, Moffat v. 8 C. P. R.	369
Herman v. Stalp, 17 C. P. R.	333
Herrington v. Winn, 20 C. P. R.	326
Hernstein, Coleman v. 3 Law Rec.	65
Hersereau v. Hirsch Co., 39 C. P. R.	105
Herter, Anger v. 3 Law Rec.	92
Herter, Bradley & Currier Co., limited, v 23 C. P. R.	408
Herzberg v. Boiesen, 2 Law Rec.	176
Herzog v. Tamsen, 27 C. P. R.	165
Hessberg v. Riley, 3 C. P. R.	165
Heurath v. Schmitz, 2 C. P. R.	400
Heuther, Dunn v. 22 C. P. R.	116
Hewitt, Estate of, 4 C. P. R.	57
Heywood, Osborne v. 29 C. P. R.	215

	Page
Higgenbotam, Cass. v. 8 C. P. R.	329
Higgins v. Birdseye, 1 Law Rec.	14
Higgins v. Callahan, 2 C. P. R.	302
Higgins v. Crichton, 2 C. P. R.	317
Higgins v. Downs, et al., Executors, 34 C. P. R.	85
Higgins v. Hoppock, 22 C. P. R.	313
Higgins v. Gedney, 28 C. P. R.	236
Higgins, Kalisch v. 33 C. P. R.	6
Higgins v. McConnell, 18 C. P. R.	322
Higgins, People ex rel., v. Grant, 19 C. P. R.	318
Higgins v. Tefft, 2 Law Rec.	1
Higuera v. Cadenas, 7 C. P. R.	305
Hill v. Kahn, 37 C. P. R.	82
Hill v. Knickerbocker Electric Light Co., 21 C. P. R.	141
Hill v. McDonald, 19 C. P. R.	431
Hill, Merrick v. 23 C. P. R.	413
Hillier, Heath v. 3 Law Rec.	194
Hillis v. Bleckert, 17 C. P. R.	254
Hillman, Townsend v. 18 C. P. R.	213
Hills, Dempewolf v. 11 C. P. R.	14
Hilton, Gillette v. 11 C. P. R.	108
Hilton, in re, 2 Law Rec.	54
Hilton v. Sinsheimer, 5 C. P. R.	355
Hinds v. Bonner, 38 C. P. R.	85
Hingston v. Miranda, 12 C. P. R.	439
Hinman, Devlin v. 29 C. P. R.	127
Hinman v. Pierce, 16 C. P. R.	138
Hinsdale, Paine v. 3 Law Rec.	20
Hirsch v. Feder, 1 Law Rec.	73
Hirsch v. Hutchinson, 3 C. P. R.	106
Hirsch Co., Hersereau v. 39 C. P. R.	105
Hirsch, Whitney v. 9 C. P. R.	249
Hirschfield v. Greenberg, 1 Law Rec.	199, 201
Hirschspring v. Boe, 13 C. P. R.	125
Hiscock v. New Yorker Staats Zeitung, 23 C. P. R.	87
Hitch, National Broadway Bank v. 23 C. P. R.	10
Hitchings, Winterson v. 25 C. P. R.	1

	Page
Hitchman v. Baxter, 5 C. P. R.	226
Hugin v. Drestel 2 Law Rec.	191
Hoag v. Hatch, 16 C. P. R.	117
Hoag v. Weston, 10 C. P. R.	92
Hoar, Brush v. 14 C. P. R.	297
Hobart v. Peck, 14 C. P. R.	433
Hobbs v. National Bank of Commerce, 30 C. P. R.	24
Hoboken Beef Co. v. Loeffel, 16 C. P. R.	394
Hodges, Buerlin v. 19 C. P. R.	107
Hodges v. Webber, 32 C. P. R.	208
Hodgkins v. Mead, 16 C. P. R.	434
Hodkins v. Mead, 17 C. P. R.	16
Hodgkins v. Mead, 18 C. P. R.	218
Hodgman v. Barker, 20 C. P. R.	341
Hodgman v. Barker, 21 C. P. R.	121
Hodgson, U. S. Mortgage & Trust Co. v. 29 C. P. R.	337
Hoe, Tirpak v. 39 C. P. R.	68
Hoes, Dickinson v. 33 C. P. R.	101
Hoes v. N. Y., N. H. & H. R. R. Co., 33 C. P. R.	308
Hoey, Brooks v. 18 C. P. R.	98
Hoff, Wasson v. 30 C. P. R.	89
Hofferberth v. Nash, 37 C. P. R.	93
Hofferberth v. Nash, 38 C. P. R.	259
Hoffman, Bloomgarden v. 38 C. P. R.	213
Hoffman, Bowman v. 22 C. P. R.	371
Hoffman, Carter v. 2 C. P. R.	328
Hoffman v. Gibb, 1 Law Rec.	18
Hoffman, Lewis v. 5 C. P. R.	141
Hoffman v. Lowell, 4 C. P. R.	103
Hoffman Mfg. Co. v. Read, 8 C. P. R.	277
Hoffman v. Ridley, 4 C. P. R.	41
Hoffman v. Schwartz, 11 C. P. R.	200
Hogg v. Mack, 17 C. P. R.	338
Holcombe, Broadwell v. 4 C. P. R.	159
Holder, DeSilver v. 6 C. P. R.	121
Holden, DeSilver v. 11 C. P. R.	404

	Page
Holden, Fitchie v. 19 C. P. R.	84
Holden v. Metropolitan Life Ins. Co., 31 C. P. R.	175
Holden, Smith v. 38 C. P. R.	208
Holden v. Miller, 2 Law Rec.	57
Holden, Moorehead v. 7 C. P. R.	188
Holland, Estate of D. P., 1 Law Rec.	82
Holland, Estate of, 2 Law Rec.	94
Holland Medicine Co., Woodard v. 21 C. P. R. . .	23
Hollender v. Hall, 18 C. P. R.	394
Hollender v. Hall, 19 C. P. R.	292
Hollister v. Simonson, 1 Law Rec.	157
Holloway, Siegrist v. 7 C. P. R.	58
Holm, Koppel v. 28 C. P. R.	26
Holm, Koppel v. 3 Law Rec.	149
Holm, Shaffer v. 3 C. P. R.	81
Holmes, Booth & Hayden v. Stietz, 6 C. P. R. . .	362
Holmes v. Jones, 13 C. P. R.	260
Holsman v. St. John, 2 C. P. R.	48
Home Bank, Martin v. 28 C. P. R.	71
Homes v. Judd, 18 C. P. R.	324, 327
Hommeyer v. Beere, 13 C. P. R.	169
Hommert v. Gleason, 20 C. P. R.	349
Honetto v. Chardon, 1 Law Rec.	33
Honeywell v. Shaffer, 18 C. P. R.	336
Hood, Estate of, 7 C. P. R.	257
Hood, Hayward v. 12 C. P. R.	421
Hood v. Hayward, 20 C. P. R.	47
Hooker v. City of Rochester, 20 C. P. R.	189
Hooper v. Beecher, 20 C. P. R.	226
Hoorman v. Climax Cycle Co., 26 C. P. R.	25
Hope, Nathans v. 5 C. P. R.	401
Hopkins v. Frey, 22 C. P. R.	416
Hopkins, Rownsend v. 9 C. P. R.	257
Hopper, in re, 1 Law Rec.	93
Hopper v. Hopper, 17 C. P. R.	214
Hopper v. Hopper, 20 C. P. R.	102
Hoppock, Higgins v. 22 C. P. R.	313
Hoppock, Timoney v. 13 C. P. R.	361

	Page
Horatz v. Second Avenue R. R., 1 Law Rec.	246
Horn v. Belanger, 1 Law Rec.	108
Horn, in re, 25 C. P. R.	357
Horn v. Terry, 22 C. P. R.	431
Horne v. City of Buffalo, 15 C. P. R.	81
Horning v. Smith, 19 C. P. R.	142
Horan v. Bruning, 39 C. P. R.	74
Hornsey, Bank of North America v. 13 C. P. R.	158
Hornthal, Galligan v. 23 C. P. R.	201
Horton v. Barnes, 23 C. P. R.	195
Horton v. Childs, 19 C. P. R.	103
Horton, Denny v. 3 C. P. R.	255
Horton v. Shepherd, 1 C. P. R.	26
Hosley v. Colerick, 9 C. P. R.	43
Hosmer v. Gans, 25 C. P. R.	101
Hotaling v. McKenzie, 7 C. P. R.	320
Hotchkiss v. Hotchkiss, 16 C. P. R.	129
Hough v. Folmsbee, 20 C. P. R.	111
Houghtaling v. Lloyd, 21 C. P. R.	56
House, Estate of Otis A., 20 C. P. R.	130
House v. Lockwood, 14 C. P. R.	411
Houston, West St. & Pavonia R. R. Co., Wolf v. 16 C. P. R.	107
Hover v. Hover, 28 C. P. R.	192
Howard v. Curran, 8 C. P. R.	263
Howard v. Stiger, 2 Law Rec.	18
Howarth v. Angle, 30 C. P. R.	306
Howe, Chilson v. 17 C. P. R.	86
Howe v. Welch, 11 C. P. R.	444
Howe, Wilcox v. 20 C. P. R.	214
Howell v. Leavitt, 2 C. P. R.	447
Howell v. Taussig, 12 C. P. R.	252
Howes, in re, 9 C. P. R.	17
Howitt v. Merrill, 16 C. P. R.	374
Hoyt, Crouch v. 24 C. P. R.	60
Hoyt v. Godfrey, 3 C. P. R.	118
Hoyt, Estate of, 7 C. P. R.	374
Hoyt, Estate of Jesse, 12 C. P. R.	208

	Page
Hoxie v. Kennedy, 15 C. P. R.	185
Hubbard v. Chapman, 27 C. P. R.	312
Hubbard v. Gicquel, 14 C. P. R.	15
Huckles v. Hantz, 1 Law Rec.	216
Hudnuts' Pharmacy, Owens v. 20 C. P. R.	145
Hudson Boot & S. Mfg. Co., Blumenthall v. 21 C. P. R.	217
Hudson River Ore & Iron C., Hecla Power Co. v. 23 C. P. R.	341
Hudson River Water Power Co., National Con- tracting Co. v. 34 C. P. R.	315
Hudson River Water Power Co., National Con- tracting Co. v. 35 C. P. R.	285
Hudson River Telephone Co. v. Watervliet Turn- pike Co., 21 C. P. R.	204
Hufnagel v. Village of Mt. Vernon, 15 C. P. R. ..	148
Hugg v. Shank, 17 C. P. R.	128
Hughes, Bishop v. 38 C. P. R.	379
Hughes, Equitable Life Ass. Soc. v. 18 C. P. R. ...	119
Hughes, Equitable Life Assurance Soc. v. 19 C. P. R.	166, 326
Hughes v. Hughes, 2 C. P. R.	139
Hulburt v. Clark, 19 C. P. R.	177
Hull v. Allen, 4 C. P. R.	300
Hullihan v. N. Y. Elevated R. R., 1 Law Rec. ..	90
Hulse v. Hulse, 17 C. P. R.	92
Humbert v. Abeel, 7 C. P. R.	417
Humbert, Lane v. 18 C. P. R.	377
Humfreville, Matter of, 26 C. P. R.	368
Humfreville, Matter of, 27 C. P. R.	1
Hummel v. Davy, 35 C. P. R.	233
Hunt v. Barry, 16 C. P. R.	362
Hunt, Estate of, 24 C. P. R.	239
Hunt v. Providence & Stonington Steamship Co., 9 C. P. R.	291
Hunt v. Sullivan, 33 C. P. R.	294
Hunter v. Manhattan Railway Co., 22 C. P. R. ...	309

	Page
Huntington, Executrix et al., <i>Spencer v.</i> 34 C. P.	
R.	30
Huntington v. Gunter, 2 Law Rec.	127
Huntington v. Huntington, 9 C. P. R.	182
Huntington v. Moore, 20 C. P. R.	160
Huntley, in re, 25 C. P. R.	79
Hurd, Averill v. 15 C. P. R.	162
Hurd v. Hannibal & St. Jo. R. R. Co., 6 C. P. R.	386
Hurlburt v. Durant, 2 C. P. R.	115
Hurlburt v. Hurlburt, 21 C. P. R.	277
Hurley v. Roberts, 39 C. P. R.	29
Hurry v. Coffin, 2 C. P. R.	319
Hurst v. Jaffray, 1 Law Rec.	43
Hurwitz v. Netherlands Steam Navigation Co., 2 Law Rec.	38
Husson, Cohn v. 5 C. P. R.	324
Husson, Cohn v. 17 C. P. R.	434
Hustace, Hemmer v. 14 C. P. R.	254
Hutchinson, Hirsch v. 3 C. P. R.	106
Hutchinson v. Lawrence, 3 C. P. R.	98
Hutckoff v. Demorest, 11 C. P. R.	67
Hutton, Kingston Carriage Co., v 25 C. P. R. ...	69
Hyatt v. Arguero, 14 C. P. R.	286
Hyatt v. Dusenbury, 12 C. P. R.	152
Hyde v. Gage, 11 C. P. R.	155
Hyde, Reeves v. 13 C. P. R.	323
Hydraulic Construction Co., <i>Pecke v.</i> 26 C. P. R.	337

I

Ibbottson v. Hamilton, 2 Law Rec.	57
Icheben, Matter of, 2 Law Rec.	73
Inderlied v. Whaley, 17 C. P. R.	377
Industrial and General Trust v. Tod, 34 C. P. R.	287
Ingersol, Camp v. 1 C. P. R.	340

	Page
Ingersoll, Getman v. 17 C. P. R.	436
Ingersol v. Mangan, 1 C. P. R.	151
Ingersol, Town of Ulysses v. 35 C. P. R.	111
Ingersol, Van Slyck v. 13 C. P. R.	48
Ingraham, Beardslee v. 35 C. P. R.	55
Ingraham University, Smith v. 23 C. P. R.	394
Innis, McCarthy v. 21 C. P. R.	333
International Paper Co., Litchfield v. 29 C. P. R.	357
Intersuburban St. Ry. Co., Rauchberger v. 38 C. P. R.	297
Imhoff v. Wurtz, 9 C. P. R.	49
Iron Malt Chemical Co., Park Sons Co. v. 2 Law Rec.	44
Irish Industrial Exposition & Amusement Co., Selly v. 38 C. P. R.	419
Irr v. Schroeder, 6 C. P. R.	253
Irsch v. Irsch, 12 C. P. R.	131
Irvin, Smith v. 38 C. P. R.	58
Irving v. Garrity, 4 C. P. R.	105
Irvin v. Metropolitan Street Railway Co., 28 C. P. R.	196
Irwin, Schenck v. 21 C. P. R.	96
Isaacs v. Dieves, 1 Law Rec.	94
Isbell-Porter Co. v. Heineman, 37 C. P. R.	131
Iscar v. McMahon, 25 C. P. R.	217
Iselin v. Henlein, 7 C. P. R.	431
Isham Wagon Co., Metoa & Sons v. 15 C. P. R. ...	259
Istok v. Senderling, 38 C. P. R.	325
Israel v. Ury, 38 C. P. R.	415
Ithaca Street Railroad Co., Bergholtz v. 29 C. P. R.	291

J

Jackson v. Bradhurst, 25 C. P. R.	228
Jackson v. Bunnell, 17 C. P. R.	79
Jackson v. Foley, 31 C. P. R.	161

	Page
Jackson, in re, 5 C. P. R.	436
Jackson, Smith v. 12 C. P. R.	423
Jacob v. Town of Oyster Bay, 39 C. P. R.	345
Jacob v. Kennedy, 2 Law Rec.	140
Jacob Lee v. 3 Law Rec.	214
Jacobs, McCrea v. 12 C. P. R.	321
Jacobs v. Zeltner, 24 C. P. R.	45
Jacobson v. Jacobson, 12 C. P. R.	198
Jacott v. Young, 2 Law Rec.	13
Jacquin v. Jacquin, 7 C. P. R.	327
Jaffe v. Dunn, 3 Law Rec.	216
Jaffray v. Loussmann, 17 C. P. R.	1
James Chambers Co., Matter of, 1 Law Rec.	258
James v. Shea, 2 C. P. R.	358
James v. Signell, 32 C. P. R.	38
James, Whitman v. 1 C. P. R.	235
Janeway v. Haft, 22 C. P. R.	291
Jargensen v. Minister, Elders and Deacons of the Reformed Low Church of Harlem, 23 C. P. R.	232
Jarvis v. Brennen, 24 C. P. R.	383
Jay, Stibbard v. 29 C. P. R.	22
Jay & Winthrop, Newton v. 35 C. P. R.	80
Jaynes v. Jaynes, 8 C. P. R.	94, 99
Jellicoe v. N. Y. & Cuba Mail S. S. Co., 3 Law Rec.	38
Jelly v. Paraiso Reduction Co., 15 C. P. R.	86
Jenkins v. City of Hudson, 8 C. P. R.	70
Jenkins, Strong v. 21 C. P. R.	9
Jenks v. Van Brunt, 6 C. P. R.	158
Jennings, Bagley v. 19 C. P. R.	199
Jensen Co., In re, 21 C. P. R.	241
Jepson v. Postal Telegraph Cable Co., 22 C. P. R.	433
Jerome v. Flagg, 15 C. P. R.	79
Jersey City Contracting Co., Simpson v. 30 C. P. R.	161

	Page
Jersey City Contracting Co., Simpson v. 31 C. P. R.	286
Jewell, Collins v. 23 C. P. R.	153
Jochen, Putnam Co. Chemical Works v. 8 C. P. R.	424
Joerns, In re, 37 C. P. R.	294
Jolly, Cooper v. 3 C. P. R.	9
John, Estate of Evan, 21 C. P. R.	326
John Hancock Mutual Life Ins. Co., McCabe v. 32 C. P. R.	320
John Lankeman Social Club, In re 1 Law Rec.	218
John D. Locke Co., Limited, People v. 12 C. P. R.	31
Johnson, Estate of, 1 Law Rec.	140
Johnson, Matter of, 32 C. P. R.	381
Johnson v. Cochran, 25 C. P. R.	215
Johnstone v. Connor, 13 C. P. R.	19
Johnson, Essex Co. Nat'l Bank v. 21 C. P. R.	321
Johnson, Dodge v. 9 C. P. R.	339
Johnston v. Donovan, 12 C. P. R.	315
Johnson, Little v. 39 C. P. R.	30
Johnson, Merriam v. 38 C. P. R.	190
Johnson, Miller v. 10 C. P. R.	205
Johnson, Pendleton v. 21 C. P. R.	273
Johnson v. Raynor, 27 C. P. R.	102
Johnson, Rumberg v. 11 C. P. R.	283
Johnson, Whitman v. 24 C. P. R.	350
Jones, In re, 6 C. P. R.	250
Jones, Thos. B., Estate of, 15 C. P. R.	45
Jones, Estate of, 1 Law Rec.	79
Jones v. American Grocery Co., 2 Law Rec.	137
Jones, Bandman v. 17 C. P. R.	417
Jones v. Bial, 1 Law Rec.	239
Jones v. Brinsmade, 35 C. P. R.	168
Jones, Candee v. 13 C. P. R.	160
Jones, Davis v. 8 C. P. R.	43
Jones v. Emery, 1 C. P. R.	338
Jones, Gaughran v. 2 Law Rec.	65
Jones v. Gould, 37 C. P. R.	183

	Page
Jones, Holmes v. 13 C. P. R.....	260
Jones, Lawson v. 1 C. P. R.....	247
Jones, Marx v. 8 C. P. R.....	49
Jones, Oesteriches v. 13 C. P. R.....	98
Jones, Ruth v. 38 C. P. R.....	472
Jones v. Sherman, 11 C. P. R.....	416
Jones v. Stewart, 7 C. P. R.....	164
Jordan v. Board of Education, 25 C. P. R.....	89
Jordan v. Harrison, 13 C. P. R.....	445
Jordan v. Donnelly, 19 C. P. R.....	413
Jordan v. Richardson, 7 C. P. R.....	411
Jordan Iron, etc., Co., Pratt Mfg. Co. v. 5 C. P. R.	372
Joseph v. Raff, 33 C. P. R.....	173
Jourdan, People ex rel. Fitzsimmons v. 1 C. P. R.	328
Jourdan v. Mealey, 22 C. P. R.....	157
Joyce v. Musical M. P. U., 1 Law Rec.....	28
Joyce, Smith v. 11 C. P. R.....	257
Joyce v. Spafard, 9 C. P. R.....	342
Judd, Homes v. 18 C. P. R.....	324, 327
Judd, Merritt v. 18 C. P. R.....	159
Judge v. Judge, 14 C. P. R.....	138
Judson v. Gruhn, 3 Law Rec.....	47
Justices of City Court of New York, People ex rel. Fireman's Ins. Co. v. 19 C. P. R.....	418

K

Kadansky, Robert v. 37 C. P. R.....	1
Kager v. Brenneman, 28 C. P. R.....	215
Kager v. Brenneman, 30 C. P. R.....	168
Kahn, Hill v. 37 C. P. R.....	82
Kahn, Mehesy v. 6 C. P. R.....	33
Kahn v. Schermerhorn, 2 Law Rec.....	75, 131, 151
Kaffenburgh, Matter of, 38 C. P. R.....	217
Kalbfleisch Co., Edison Elec. Ill. Co. v. 38 C. P. R.	361

	Page
Kalisch v. Higgins, 33 C. P. R.....	6
Kaliske, Ascheim v. 3 Law Rec.....	143
Kaliske v. Weil, 24 C. P. R.....	248
Kaliski v. Pehan Park R. R. Co., 20 C. P. R....	315
Kamber v. Franklin Transportation Co., 39 C. P. R.	93
Kane, Bruns v. 12 C. P. R.....	87
Kane, White v. 7 C. P. R.....	267
Kantrowitz v. Kulla, 13 C. P. R.....	74
Kapp, Dalon v. 11 C. P. R.....	58
Kaplan v. Shapiro, 39 C. P. R.....	155
Karp, Deegan v. 13 C. P. R.....	202
Karger v. Karger, 26 C. P. R.....	161
Karrick, Nicoll v. 29 C. P. R.....	367
Karsch Brewing Co., Bell v. 39 C. P. R.....	134
Kastriner, Worth v. 37 C. P. R.....	209
Katzenbach v. M. Leod, 1 Law Rec.....	45
Katzenstein v. Lehman, 1 Law Rec.....	405
Kaufman, In re, Will of, 21 C. P. R.....	88
Kaufman, Angle v. 4 C. P. R.....	201
Kaufman v. Keenan, 13 C. P. R.....	225
Kaufman v. Lindner, 6 C. P. R.....	148
Kaufmann, Steinberg v. 2 Law Rec.....	180
Kavanaugh, Moloughney v. 3 C. P. R.....	253
Kavanaugh v. Satterlee, 34 C. P. R.....	195
Kearney, People ex rel. Covenay v. 30 C. P. R....	11
Keating, Gallagher v. 29 C. P. R.....	234
Keating v. Goddard, 8 C. P. R.....	377
Keddie, Hegerich v. 5 C. P. R.....	228
Keeler, Matter of, 18 C. P. R.....	30
Keeler v. Barretts, Palmer & Heal Dyeing Estab- lishment, 12 C. P. R.....	121
Keeler v. McNeirney, 6 C. P. R.....	363
Keeler, Thomas v. 16 C. P. R.....	408
Keeler, Warring v. 24 C. P. R.....	427
Keenan, Kaufman v. 13 C. P. R.....	225
Keenan v. O'Brien, 16 C. P. R.....	71, 75, 431, 439
Keepers, Smith v. 5 C. P. R.....	66

	Page
Keene, Andrews v. 4 C. P. R.....	330
Keihen v. Shipherd, 16 C. P. R.....	183
Keiher v. Shipherd, 4 C. P. R.....	274
Keity v. Traynor, 28 C. P. R.....	342
Keim v. Brown, 30 C. P. R.....	185
Keller v. Dunham, 37 C. P. R.....	158
Keller, New England Mutual Life Ins. Co. v. 7 C. P. R.	109
Keller v. Feldman, 23 C. P. R.....	37
Kelly, People ex rel. Henry Prouse Cooper Co. v. 12 C. P. R.....	414
Kelly v. Frazier, 2 C. P. R.....	322
Kelly, Koehler v. 7 C. P. R.....	81
Kelly v. The Mayor, etc., 26 C. P. R.....	123
Kelly v. N. Y. Central & Hudson River R. R. Co., 23 C. P. R.....	67
Kelly v. Security Mutual Life Ins. Co., 37 C. P. R.	235
Kelly v. Theiss, 27 C. P. R.....	129
Kelly, Valentine v. 17 C. P. R.....	367
Kellogg, McComb v. 13 C. P. R.....	150
Kellogg v. Reese, 14 C. P. R.....	283
Kelsey, Nichols v. 13 C. P. R.....	154
Kendall, Perkins v. 3 C. P. R.....	240
Kendrick, Estate of, 7 C. P. R.....	273
Kendrick, Sabin v. 25 C. P. R.....	280
Kennagh v. McColgan, 17 C. P. R.....	287
Kennedy v. Arthur, 18 C. P. R.....	390
Kennedy, Estate of, 1 Law Rec.....	143
Kennedy v. Comstock, 15 C. P. R.....	240
Kennedy v. First Nat'l Bank of Pittsburgh, 8 C. P. R.	399
Kennedy, Goldman v. 14 C. P. R.....	392
Kennedy, Hoxie v. 15 C. P. R.....	185
Kennedy, Jacob v. 2 Law Rec.....	140
Kenedy v. Lamb, 34 C. P. R.....	326
Kennedy v. N. Y. C. & H. R. R. R. Co., 15 C. P. R.	347
Kennedy v. Twenty-third St. R. Co., 38 C. P. R.	240

	Page
Kennedy v. Wood, 17 C. P. R.....	375
Kenny v. Geoghegan, 9 C. P. R.....	378
Kent v. Popham, 6 C. P. R.....	336
Keough, Matter of, 28 C. P. R.....	340
Kerr v. Dildine, 20 C. P. R.....	366
Kemp, Estate of, 1 Law Rec.....	141
Kempf, Weil v. 12 C. P. R.....	379
Kempel, Hanning v. 2 Law Rec.....	123
Kempfer v. Gorman, 22 C. P. R.....	34
Kempton, Albright v. 4 C. P. R.....	16
Kepler v. Merkle, 9 C. P. R.....	284
Kernan, Woods v. 19 C. P. R.....	180
Kerner v. Steck, 18 C. P. R.....	286
Kerr, Reiley v. 3 Law Rec.....	52
Kerr, Smith v. 15 C. P. R.....	126
Kersch v. Rome, Watertown & Ogdensburg R. R. Co., 14 C. P. R.....	167
Kerwin v. Valentine, 13 C. P. R.....	334
Kessell, Koehler v. 3 Law Rec.....	61
Kessell, Matter of, 1 Law Rec.....	170
Kessler v. Levy, 1 Law Rec.....	252
Ketaltas, Smith v. 3 Law Rec.....	21
Ketaltas, Smith v. 27 C. P. R.....	209
Keteltas, Week v. 10 C. P. R.....	43
Ketcham, Bloomfield v. 5 C. P. R.....	407
Keys, Ellensohn v. 25 C. P. R.....	353
Keystone Watch Case Co., Dubal Watch Case Man'f'g. Co. v. 23 C. P. R.....	44
Kick, Barbig v. 25 C. P. R.....	62, 237
Kidd's Estate, In re, 37 C. P. R.....	280
Kieley v. Central Combustion Co., 25 C. P. R..	48
Kiefer v. Grand Trunk R. R. Co., 26 C. P. R....	147
Kieffendorf, McDonald v. 22 C. P. R.....	105
Kienmas Assn., Phoenix National Bank v. 2 Law Rec.	74
Kiernan v. Eidlitz, 37 C. P. R.....	264
Kiernan, People ex rel, v. Grant, 10 C. P. R.....	172
Kiernan v. Reming, 7 C. P. R.....	311

	Page
Kilgannon, Trimble v. 24 C. P. R.....	400
Killan, Matter of, 33 C. P. R.....	241
Kilpatrick, Heidelberg, 3 C. P. R.....	209
Kimball, English v. 2 Law Rec.....	17
Kincaid, Bailey v. 19 C. P. R.....	232
King, In re, 8 C. P. R.....	159
King, Board of Education v. 7 C. P. R.....	64
King, Butterick Pub. Co., 2 Law Rec.....	45
Wing v. Hascall, 31 C. P. R.....	207
King, Estate of Julia, 10 C. P. R.....	175
King, Little Falls Nat'l Bank v. 31 C. P. R.....	99
King v. Todd, 21 C. P. R.....	114
King, Van Arsdale v. 27 C. P. R.....	181
Kings v. Townshend, 23 C. P. R.....	326
Kingsford v. Butler, 23 C. P. R.....	228
Kingsley, Brady v. 5 C. P. R.....	413
Kingsley v. Jones, 1 Law Rec.....	215
Kingsland v. Mayor, Etc., 16 C. P. R.....	323
Kingston Carriage Co. v. Hutton, 25 C. P. R....	69
Kinsella, Estate of, 2 Law Rec.....	33
Kinsey v. Allen, 1 Law Rec.....	102
Kip, Hart v. 25 C. P. R.....	205
Kipp v. McLean, 7 C. P. R.....	389
Kipp v. Rapp, 7 C. P. R.....	316, 385
Kirby, Castree v. 2 C. P. R.....	334
Kirby, Henning v. 2 Law Rec.....	43
Kirby, Levy v. 7 C. P. R.....	98
Kirby, Vogle v. 15 C. P. R.....	332
Kirchner v. Geo. C. Flint Co., 19 C. P. R.....	368
Kirkham, Paddock v. 11 C. P. R.....	50
Kirkpatrick, Felt v. 3 Law Rec.....	223
Kirkpatrick, Lablache v. 8 C. P. R.....	256, 340
Kister v. Manhattan R. R. Co., 1 Law Rec.....	106
Kitchen, Decker v. 2 C. P. R.....	111
Kittell v. Stueve, 24 C. P. R.....	223
Kleiss, Kucklo v. 15 C. P. R.....	431
Klingensmith, Matter of, 29 C. P. R.....	69
Klinker, Third Avenue R. R. Co. v. 29 C. P. R..	51

	Page
Kleinpeter v. Enell, 2 C. P. R.....	21
Klingman, Gillespie v. 3 Law Rec.....	73
Klock v. Brennan, 20 C. P. R.....	139
Kloster v. Van Schaick, 2 C. P. R.....	336
Klotz, Krone v. 25 C. P. R.....	320
Knaggs v. Easton, 38 C. P. R.....	485
Knapp, Estate of, 28 C. P. R.....	220
Knap v. Bowery Savings Co., 1 Law Rec.....	225
Knapp, Brewer v. 27 C. P. R.....	41
Knapp v. Burton, 7 C. P. R.....	448
Knapp v. Hammersley, 13 C. P. R.....	258
Knapp, Patterson v. 24 C. P. R.....	251
Knapp v. Simon, 6 C. P. R.....	1
Knapp, Stern v. 8 C. P. R.....	54
Knapp v. Valentine, 24 C. P. R.....	
Kneuper, Sire v. 15 C. P. R.....	434
Kneeland v. Pennell, 38 C. P. R.....	489
Knickerbocker Electric Light Co., Hill v. 21 C. P. R.	141
Knickerbocker Ice Co., Birkett v. 10 C. P. R....	52
Knickerbocker S. Co. v. Valentine, 3 Law Rec..	43
Knickerbocker Trust Co., Hardy v. 28 C. P. R..	10
Knickerbocker Trust Co. v. Oneonta, C. & R. S. Railway Co., 37 C. P. R.....	359
Knight v. Abel, 15 C. P. R.....	137
Knights of Honor, Davis v. 31 C. P. R.....	298
Knights of Pythias v. Manhattan Savings Inst., 25 C. P. R.....	44
Knipe v. Brooklyn Daily Eagle, 34 C. P. R....	44
Knittel, Estate of, 12 C. P. R.....	1
Knoch v. Funke, 22 C. P. R.....	161
Knorr v. Bates, 24 C. P. R.....	377
Knowles, Canarie v. 11 C. P. R.....	418
Knowles v. DeLazare, 8 C. P. R.....	386
Knowlton, McSkiman v. 20 C. P. R.....	274
Knox, Greene v. 33 C. P. R.....	205
Knox v. Nobel, 23 C. P. R.....	311, 429
Knox v. Wells, 17 C. P. R.....	59

	Page
Knox, Wells v. 18 C. P. R.....	87
Knudsen v. Matuska and Craig Furniture Co., 7 C. P. R.....	86
Koch, Becker v. 12 C. P. R.....	75
Koch, Estate of John Caspar, 19 C. P. R.....	165
Koch, Lehman v. 18 C. P. R.....	301
Koch, Matter of, 2 Law Rec.....	66
Koehler v. Farmers & Drovers Bank, 14 C. P. R.	71
Koehler v. Farmers and Drovers National Bank, 17 C. P. R.....	307
Koehler v. Kelly, 7 C. P. R.....	81
Koehler v. Kessel, 3 Law Rec.....	61
Koehler v. New York Steam Co., 35 C. P. R.....	115
Koeing v. N. Y. Life Ins. Co., 14 C. P. R.....	269
Kohn, Finkler v. 3 Law Rec.....	192
Kokomo Straw Board Co. v. Sacho, 17 C. P. R...	432
Kopp, In re, 15 C. P. R.....	282
Kopp, Frost v. 13 C. P. R.....	377
Kopp v. White, 30 C. P. R.....	352
Koppel v. Holm, 3 Law Rec.....	149
Koppel v. Holm, 28 C. P. R.....	26
Koppel v. Tilyou, 31 C. P. R.....	185
Kortright, Lahey v. 13 C. P. R.....	352
Kortright, Lahey v. 19 C. P. R.....	80
Koster v. Pain, 29 C. P. R.....	361
Kraft, Seifret v. 13 C. P. R.....	321
Krafft v. Wilson, 8 C. P. R.....	359
Krakaner, Wingert v. 34 C. P. R.....	146
Kramer v. Schatzkin, 29 C. P. R.....	86
Krainin v. Coffey, 39 C. P. R.....	315
Kranz v. Lewis, 37 C. P. R.....	368
Kranz v. Dun, 8 C. P. R.....	403
Kratzenstein v. Lehman, 26 C. P. R.....	244
Krause v. Averill, 4 C. P. R.....	410
Krause v. Hogan, 1 Law Rec.....	207
Krause, Rutherford v. 24 C. P. R.....	1
Krauss v. Cohen, 2 Law Rec.....	18
Krauss v. Hallbeimer, 23 C. P. R.....	317

	Page
Kreis, Straus v. 6 C. P. R.....	77
Kreiser, Schofield v. 21 C. P. R.....	294
Kreiser v. Scofield, 24 C. P. R.....	170
Krieg, Estate of, 1 Law Rec.....	172
Krill v. Brownell, 10 C. P. R.....	8
Krindell, Betts v. 13 C. P. R.....	157
Krippendorf-Ditman Co. v. Cohn, 2 Law Rec....	49
Krohn, People ex rel, v. Miller, 9 C. P. R.....	149
Krom v. Kursheedt, 6 C. P. R.....	371
Krone v. Klotz, 25 C. P. R.....	320
Kronsberg v. Mayer, 20 C. P. R.....	80
Kucklo v. Kleiss, 15 C. P. R.....	431
Kuedienmeister v. Brown, 1 Law Rec.....	149
Kuhl v. Ward, 1 Law Rec.....	48
Kulla, Kantrowit v. 13 C. P. R.....	74
Kummer v. Christopher and Tenth St. R. R. Co., 24 C. P. R.....	403
Kuntz v. Bachman, 1 C. P. R.....	281
Kurinsky, People v. 3 Law Rec.....	95
Kursheedt, Krom v. 6 C. P. R.....	371
Kurtz, West v. 15 C. P. R.....	424

L

Labagh, Byrnes v. 12 C. P. R.....	417
Lablache v. Kirkpatrick, 8 C. P. R.....	256, 340
La Compagnie, etc., De Vischy, Emanuel v. 16 C. P. R.	188
Lacy v. Wilkinson, 7 C. P. R.....	104
Ladd, Estate of, 5 C. P. R.....	50
Ladenburg v. Commercial Bank, 1 Law Rec....	392
Ladenburg v. Commercial Bank of Newfound- land, 24 C. P. R.....	234
Ladew, Byrnes v. 25 C. P. R.....	143
Ladew, Stern v. 30 C. P. R.....	135
Lafrentz v. Mass, 23 C. P. R.....	238

	Page
Lagin, Franklin v. 3 Law Rec.....	91
Lahey v. Kortright, 13 C. P. R.....	352
Lahey v. Kortright, 19 C. P. R.....	80
Laidley v. Rogers, 23 C. P. R.....	110
Lake v. Halestine, 12 C. P. R.....	309
Lake Shore & Michigan Southern Railroad Co., Matter of, 39 C. P. R.....	81
Lalance-Grosjan Manuf. Co., Cooke v. 3 C. P. R..	332
Lamb, Ashley v. 15 C. P. R.....	211
Lamb, In re, 21 C. P. R.....	325
Lamb, Kennedy v. 34 C. P. R.....	326
Lambart, Diehl v. 9 C. P. R.....	267, 347
Lambert v. Craft, 7 C. P. R.....	364
Lambert v. Perry, 14 C. P. R.....	274
Lamberty v. Roberts, 19 C. P. R.....	63
Lamar Ins. Co., Machin v. 2 C. P. R.....	28
Lamming v. Galusha, 22 C. P. R.....	16
Lampman v. Smith, 17 C. P. R.....	19
Lamprecht v. Lamprecht, 3 Law Rec.....	2
Lamson Consolidated Store Service Co., Adams v. 20 C. P. R.....	152
Lancaster, Ganz v. 32 C. P. R.....	300
Landen v. Townshend, 16 C. P. R.....	161
Landon, Brown v. 4 C. P. R.....	11
Landon v. N. Y. Book Co., 20 C. P. R.....	280
Landon v. Van Etten, 18 C. P. R.....	127
Langdon v. Van Etten, 19 C. P. R.....	78
Lane, Estate of, 1 Law Rec.....	87
Lane v. Humbert, 18 C. P. R.....	377
Lane, Naylor v. 5 C. P. R.....	149
Laney v. Rochester R. R. Co., 24 C. P. R.....	157
Lang v. Marks, 3 C. P. R.....	287
Langan, McBride v. 18 C. P. R.....	201
Langan, McBride v. 19 C. P. R.....	41
Langbein, Estate of, 2 C. P. R.....	226
Langford, Mead v. 18 C. P. R.....	293
Lanier v. City Bank of Houston, 9 C. P. R.....	161
Lansing v. Manhattan R. R. Co., 1 Law Rec.....	16

	Page
Lape, Eisenberg v. 39 C. P. R.....	95
Larkins v. Maxon, 11 C. P. R.....	298
Larkin v. Van Namee, 35 C. P. R.....	276
Larnac, Estate of, 1 Law Rec.....	19
Larned v. The Mayor, etc., 2 Law Rec.....	205
Larocque v. Harvey, 19 C. P. R.....	109
Larry, Wood v. 20 C. P. R.....	136
La Scala v. Lyon, 19 C. P. R.....	71
Lasher, People v. 19 C. P. R.....	372
La Societe Anonyme de l'Union des Papeteries, Marks v. 22 C. P. R.....	201
Lassall v. Pati, 28 C. P. R.....	328
Lassiter v. Hyde, 1 Law Rec.....	177
Lathrop v. Brown, 5 C. P. R.....	101
Latteman v. Fere, 11 C. P. R.....	217
Laubheim, Talbot v. 39 C. P. R.....	171
Laude v. Smith, 6 C. P. R.....	51
Lawler v. Magnolia Metal Co., 25 C. P. R.....	235
Lawrence, Dennison v. 29 C. P. R.....	176
Lawrence v. Foxwell, 4 C. P. R.....	340, 351
Lawrence, H. J., Estate of, 15 C. P. R.....	54
Lawrence, Herbert v. 21 C. P. R.....	336
Lawrence, Hutchinson v. 3 C. P. R.....	98
Lawrence v. Samuels, 26 C. P. R.....	10
Lawrence v. Tallman, 28 C. P. R.....	21
Lawrence, Van Sinderen v. 14 C. P. R.....	64
Lawrenceville Cement Co. v. Parker, 21 C. P. R.	263
Lawson, Dodge v. 22 C. P. R.....	112
Lawson v. Jones, 1 C. P. R.....	247
Lawson v. Lawson, 12 C. P. R.....	437
Lawson v. Reilley, 13 C. P. R.....	200
Lawyers' Surety Co. v. Anthony, 1 Law Rec....	167
Layman v. John Anderson Co., 1 Law Rec.....	191
Laytin, Estate of, 25 C. P. R.....	186
Lazarus v. Ludwig, 25 C. P. R.....	342
Lazarus v. Ludwig, 26 C. P. R.....	60
Lazarus v. Ludwig, 1 Law Rec.....	156
Lazarus v. Heilman, 2 C. P. R.....	204

	Page
Lazarus v. Metropolitan Elevated R. R. Co., 24 C. P. R.....	261
Lazarus, Van Buren v. 2 Law Rec.....	8
Leach, County Clerk, People ex rel; Flynn, Sheriff, v. 34 C. P. R.....	20
Leach v. Thornburg, 2 Law Rec.....	101, 102
Leeds Mfg. Co., Bennet v. 14 C. P. R.....	441
Leahy v. Prudential, 3 Law Rec.....	53
Learned v. Tillotson, 6 C. P. R.....	225
Leaycraft, McClure v. 35 C. P. R.....	159
Leary v. Boggs, 3 C. P. R.....	227
Leary v. Church of St. Mary and Corvin, 30 C. P. R.	38
Leavitt, Howell v. 2 C. P. R.....	447
Le Baron, Harlock v. 1 C. P. R.....	168
Le Bontillier, Dr. Jaeger's Sanitary Woolen System Co. v. 22 C. P. R.....	7
Leddy v. Greenwich Savings Bank, 1 Law Rec..	221
LeBaron, Estate of, 6 C. P. R.....	62
Leddy, Morrissey v. 11 C. P. R.....	438
Lederer v. Adams, 19 C. P. R.....	294
Lederer, Myers v. 38 C. P. R.....	403
Ledoux v. Samuels, 38 C. P. R.....	48
Lee, Avery v. 38 C. P. R.....	90
Lee v. Lee, 4 C. P. R.....	321
Lee, Foster v. 3 Law Rec.....	212
Lee v. Jacob, 3 Law Rec.....	214
Lee v. McLaughlin, 16 C. P. R.....	151
Lee, Riley v. 28 C. P. R.....	170
Leer v. Warmser, 38 C. P. R.....	340
Leggett, Laura, Matter of, 30 C. P. R.....	109
Leggott, Matter of, 31 C. P. R.....	6
Lego, Vaughn v. 15 C. P. R.....	164
Leigh, Quick v. 20 C. P. R.....	147
Lehman v. Koch, 18 C. P. R.....	301
Lehning, Scheu v. 4 C. P. R.....	385
Le Massena, Jr., v. Storm, 32 C. P. R.....	119

	Page
Lenk, First National Bank of Jersey City, 18 C.	
P. R.	209
Lenicky, Elliott v. 7 C. P. R.	82
Lennon, Madden v. 3 Law Rec.	54
Lennon, Malloy v. 27 C. P. R.	166
Lennon v. Smith, 22 C. P. R.	22
Leonard v. Bowman, 21 C. P. R.	237
Leonard v. Faber, 28 C. P. R.	18
Leonard v. Germania Life Ins. Co., 23 C. P. R. ...	155
Leonard, Hatch v. 31 C. P. R.	374
Leonard Scott Publishing Co., Mershon v. 4 C.	
P. R.	319
Leonard v. Leonard, 3 Law Rec.	64
Leopold v. Lichstenstein, 1 Law Rec.	77
Lerche v. Brasher, 8 C. P. R.	115
Lerche v. Brasher, 11 C. P. R.	423
LeRoy v. Brown, 18 C. P. R.	125
LeRoy, Estate of, 16 C. P. R.	343
Lesbini, Bell v. 4 C. P. R.	367
Lesourd, Estate of, 2 Law Rec.	60
Lesser, Matter of, 39 C. P. R.	146
Lesser v. The Lawyers' Surety Co., 30 C. P. R. ...	388
Letzman, Schneider v. 19 C. P. R.	217
Leubusher, McDonald v. 28 C. P. R.	265
Leubisher, People ex rel. McDonald v. 27 C. P. R.	297
Lewis, Kranz v. 37 C. P. R.	368
Lewisohn v. Anaconda Copper Co., 27 C. P. R. ...	257
Leverich, Pringle v. 1 C. P. R.	373
Lever, Argersinger v. 17 C. P. R.	352
Levison, Weinstock v. 20 C. P. R.	1
Levy, Gowing v. 22 C. P. R.	10
Levy, Barnes v. 23 C. P. R.	253
Levy, In re, 2 C. P. R.	108
Levy v. Kirby, 7 C. P. R.	97
Levy, Muller v. 17 C. P. R.	113
Levy, Myerson v. 38 C. P. R.	257
Levy, People v. 25 C. P. R.	390
Levy, Philipe v. 15 C. P. R.	68

	Page
Levy v. Popper, 35 C. P. R.....	1
Levenus Rant v. 5 C. P. R.....	368
Levy v. Salomon, 12 C. P. R.....	125
Levy v. Scheringer, 19 C. P. R.....	346
Levey v. Tribune Assn., 3 Law Rec.....	3
Lewis v. Cook, 25 C. P. R.....	65
Lewis v. Empire State Ins. Co., 23 C. P. R.....	295
Lewis v. Guardian Fire and Life Assurance Co., 35 C. P. R.....	20
Lewis v. Hoffman, 5 C. P. R.....	141
Lewis, Morrison v. 4 C. P. R.....	437
Lewis, Muser v. 6 C. P. R.....	135
Lewis, Proweeder v. 24 C. P. R.....	299
Lewis v. Stevens, 4 C. P. R.....	224
Lewisohn v. Apple, 12 C. P. R.....	274
Lewisohn v. Neiderweisen, 9 C. P. R.....	431
Lex Realty Co., McCrum v. 37 C. P. R.....	137
Lexington Avenue, Matter of, 27 C. P. R.....	245
Lezensky v. Supreme Lodge of the Knights of Honor, 20 C. P. R.....	10
Libbey, Estate of, 11 C. P. R.....	250
Libbey v. Mason, 11 C. P. R.....	250
Libbey v. Mason, 16 C. P. R.....	191
Litchfield v. International Paper Co., 29 C. P. R.	357
Lichtenberg v. Herdtfelder, 5 C. P. R.....	426
Lichtenstadter, Tracy v. 37 C. P. R.....	146
Lichtenstein, Estate of, 25 C. P. R.....	301
Lidgerwood Mfg. Co. v. Baird, 6 C. P. R.....	54
Lieben, Gray v. 8 C. P. R.....	48
Light, In re, 18 C. P. R.....	89 note
Lincoln Nat'l Bank, Davies v. 16 C. P. R.....	68
Lilburn v. Gillies, 1 Law Rec.....	88
Lincoln Nat'l Bank, Roesch v. 3 Law Rec.....	8
Lindner, Kaufman v. 6 C. P. R.....	148
Lindsay, Perrow v. 16 C. P. R.....	359
Lingsweiler v. Lingsweiler, 18 C. P. R.....	81
Link v. Weaver, 21 C. P. R.....	284
Link, Marshall v. 20 C. P. R.....	109

	Page
Linn, Burton v. 2 Law Rec.....	170
Lipp v. Otis Bros. & Co., 30 C. P. R.....	270
Lippincott, In re, 1 Law Rec.....	3
Lippincott v. Westray, 6 C. P. R.....	74
Lipman, Barbig v. 2 Law Rec.....	37
Lipman, Estate of, 2 Law Rec.....	70
Lipman v. Lipman, 1 Law Rec.....	242
Lipsky, Wendell, 8 C. P. R.....	388
L. I. R. R. Co., Pringle v. 3 Law Rec.....	210
Listler, Fromme v. 22 C. P. R.....	37
Little Falls Nat'l Bank v. King, 31 C. P. R.....	99
Little v. Johnson, 39 C. P. R.....	30
Little v. Lynch, 5 C. P. R.....	216
Little v. Lynch, 6 C. P. R.....	418
Littlejohn, Ward v. 17 C. P. R.....	178
Ljungquist v. Hartmetz, 39 C. P. R.....	140
Livey, Winton v. 16 C. P. R.....	348
Livingston v. Manhattan Railway Co., 21 C. P.	
R.	100, 309
Livingston v. Morrissey, 6 C. P. R.....	28
Livingstone v. N. Y. Elevated Railway Co., 18 C.	
P. R.	369
Livingston v. N. Y. Elevated R. R. Co., 19 C. P. R.	358
Livingston v. N. Y. Elevated R. R. Co., 21 C. P. R.	210
Livingstone, Pollman v. 26 C. P. R.....	302
Livingston v. Ryan, 2 Law Rec.....	73
Lobenthall, Thompson Co. v. 24 C. P. R.....	247
Locke v. Covert, 12 C. P. R.....	31
Locke, Gardner v. 2 C. P. R.....	252
Lock v. Rudd, 3 Law Rec.....	80
Lockhard, Clark v. 13 C. P. R.....	278
Lockwood, Clare v. 19 C. P. R.....	157
Lockwood v. Fox, 1 C. P. R.....	407
Lockwood, House v. 14 C. P. R.....	411
Lockwood, Spier v. 29 C. P. R.....	164
Loder v. Whelpley, 16 C. P. R.....	89
Loeffel, Hoboken Beef Co. v. 16 C. P. R.....	394
Loehr, Weitkamp v. 11 C. P. R.....	36

	Page
Loeser, Dr. Jaeger's Sanitary Woolen System Co.	
v. 22 C. P. R.	7
Loew et al. People v. 26 C. P. R.	132
Loewey v. N. German L. S. S. Co., 1 Law Rec..	54
Logan v. Moore, 27 C. P. R.	241
Logan v. Moore, 3 Law Rec.	99, 119
Logan v. McCall Pub. Co., 23 C. P. R.	246
Lloyd, Houghtaling v. 21 C. P. R.	56
London Guarantee & Accident Co., Worthington	
v. 31 C. P. R.	274
Longden v. Brown, 7 C. P. R.	130
Londrigan v. N. Y., N. H. & H. R. R. Co., 5 C.	
P. R.	76
Longuemare v. Nichols, 17 C. P. R.	107
Longuemare v. Nichols, 18 C. P. R.	97 note
Long v. Rogers, 24 C. P. R.	63
Long, Smith v. 3 C. P. R.	396
Long Acre Square Building Co., Peabody v. 39	
C. P. R.	5
Long Island Railroad Co., Bennett v. 34 C. P. R.	292
Long Island R. R. Co., Griffin v. 9 C. P. R.	84
Long Island Railroad Co., Taylor v. 28 C. P. R..	118
Long Island Water Supply Co., City of Brook-	
lyn v. 24 C. P. R.	117
Long Island Water Supply Co., City of Brook-	
lyn v. 25 C. P. R.	14
Longstreet, Hearey v. 21 C. P. R.	16
Loomis, People ex rel, White v. 2 C. P. R.	278
Loomis v. Southern Railway, 1 Law Rec.	219
Looschen v. Nuelhfeld & Haynes Piano Co., 26 C.	
P. R.	91
Lord v. Raymond, 1 Law Rec.	216
Lorillard v. Clyde, 3 C. P. R.	307
Lorillard, Seymour v. 8 C. P. R.	90
Loring v. Binney, 8 C. P. R.	297
Lossen, Everall v. 7 C. P. R.	112
Loudon, Steiger v. 38 C. P. R.	62
Loughran, Uhl v. 14 C. P. R.	344

	Page
Loughran, Uhl v. 16 C. P. R.....	380
Louis H. Bold Assn., In re, 1 Law Rec.....	218
Louis Lee, United States of America v. 32 C. P. R.	1
Lovell, Cragin v. 2 C. P. R.....	128
Lowe, Schell v. 23 C. P. R.....	301
Lowell, In re, 8 C. P. R.....	5
Lowell, Hoffman v. 4 C. P. R.....	103
Lower, People ex rel, Donovan v. 23 C. P. R....	1
Lowerre, Matter of, 35 C. P. R.....	259
Lowther v. Louthier, 37 C. P. R.....	290
Lowry, Cole v. 23 C. P. R.....	113
Loy, Blumindale v. 3 Law Rec.....	212
Luce v. Alexander, 4 C. P. R.....	428
Luckey v. Mockridge, 37 C. P. R.....	78
Ludden v. Degener, 26 C. P. R.....	182
Ludlow v. Woodward, 39 C. P. R.....	26
Ludvik, Bowen v. 38 C. P. R.....	358
Ludwig, Lazarus v. 25 C. P. R.....	342
Ludwig, Lazarus v. 26 C. P. R.....	60
Lugar v. Byrnes, 15 C. P. R.....	72
Lumpkin, Nichols v. 7 C. P. R.....	1
Lush v. Adams, 10 C. P. R.....	60
Lusk, Button v. 19 C. P. R.....	111
Lust, People ex rel. v. Grant, 10 C. P. R.....	158
Lutz v. Manhattan Railway, 1 Law Rec.....	98
Lutz, Nagel v. 29 C. P. R.....	305
Luydig v. Luydig, 1 Law Rec.....	32
Lyddy, Campbell, etc., Co. v. 1 C. P. R.....	364
Lynan v. Anderson, 3 Law Rec.....	69
Lyman v. Bowe, 5 C. P. R.....	157
Lyman, Estate of Samuel, 20 C. P. R.....	421
Lynch, Eagan v. 3 C. P. R.....	238
Lynch, Flynn v. 23 C. P. R.....	319
Lynch, Little v. 5 C. P. R.....	216
Lynch, Little v. 6 C. P. R.....	418
Lynch v. Metropolitan Elevated R. R. Co., 21 C. P. R.	420
Lynch v. M. S. Wynan Co., 1 Law Rec.....	200

	Page
Lynch v. Sauer, 25 C. P. R.....	287
Lynch, Smith v. 12 C. P. R.....	348
Lynch v. Walsh, 11 C. P. R.....	446
Lyon v. Betchford, 8 C. P. R.....	229
Lyons v. Cahill, 12 C. P. R.....	72
Lyon v. Cahill, 13 C. P. R.....	314
Lyon, La Scala v. 19 C. P. R.....	71
Lyons National Bank v. Schuler, 37 C. P. R....	303
Lyon v. Park, 16 C. P. R.....	109
Lyon, People v. 39 C. P. R.....	351
Lyon, Sadlier v. 24 C. P. R.....	105
Lyon v. Scott, 1 Law Rec.....	94
Lyon v. Susquehanna & Western R. R. Co., 14 C. P. R.	318
Lytle v. Crawford, 32 C. P. R.....	360

M

McAdam, People ex rel. Browne v. 2 C. P. R....	52
McAdam, People ex rel. Cavanagh v. 2 C. P. R..	396
McAdam v. Walbrau, 8 C. P. R.....	451
McAleenan, Matter of, 31 C. P. R.....	230
McAllister, Walter v. 27 C. P. R.....	33
McAllister v. Bailey, 14 C. P. R.....	401
McBean, Herald v. 27 C. P. R.....	214
McBlaine v. Speelman, 6 C. P. R.....	401
McBride v. Lagan, 18 C. P. R.....	201
McBride v. Lanagan, 19 C. P. R.....	41
McCabe v. Goodfellow, 21 C. P. R.....	65
McCabe, Estate of, 2 Law Rec.....	210
McCabe v. John Hancock Mutual Life Ins. Co., 32 C. P. R.	320
McCaffrey, Dienst v. 24 C. P. R.....	238
McCall v. Frith, 2 C. P. R.....	9
McCall v. Frith, 4 C. P. R.....	102

	Page
McCall Pub. Co., Logan v. 23 C. P. R.....	246
McCall Pub. Co., Stephens as receiver, exct. of, v. Page, 23 C. P. R.....	191
McCaulay v. Palmer, 9 C. P. R.....	390
McCann, Sullivan v. 37 C. P. R.....	113
McCarron v. Sire, 14 C. P. R.....	252
McCarthy, Crawford v. 2 Law Rec.....	97, 108
McCarthy, Furber v. 18 C. P. R.....	69
McCarthy, Furber v. 20 C. P. R.....	229
McCarthy v. Innis, 21 C. P. R.....	333
McCarthy, Matter of, 26 C. P. R.....	397
McCarthy v. R. G. Packhard Co., 34 C. P. R.....	321
McCarthy, Smyth, 2 Law Rec.....	9
McCarty, Shaw v. 2 C. P. R.....	23
McCosker v. Smith, 20 C. P. R.....	324
McClellen, Haggerty v. 35 C. P. R.....	86
McClellen, People v. 39 C. P. R.....	178
McClennahan, McRea v. 37 C. P. R.....	195
McClosky, Miller v. 1 C. P. R.....	252
McClure v. Goodenough, 19 C. P. R.....	191
McClure v. Leaycraft, 35 C. P. R.....	159
McColgan, Kennagh v. 17 C. P. R.....	287
McComb v. Kellogg, 13 C. P. R.....	150
McConnell, Higgins v. 18 C. P. R.....	322
McConnell v. Manhattan Construction Co., 16 C. P. R.	310
McCoun, Sperb v. 15 C. P. R.....	371
McCrea, Becker v. 39 C. P. R.....	150
McCrea v. Jacobs, 12 C. P. R.....	321
McCrea v. McClennahan, 37 C. P. R.....	195
McCreery Realty Corp. v. Equitable Natl. Bank, 38 C. P. R.....	271
McCrum v. Lex Realty Co., 37 C. P. R.....	137
McCroskey, Estate of, 10 C. P. R.....	178
McCue v. Finck, 2 Law Rec.....	125
McCulloh v. Paillard Non-Magnetic Watch Co., 20 C. P. R.....	386
McCullosh v. Vibbard, 14 C. P. R.....	388

	Page
McCunn, Patterson v. 9 C. P. R.....	122
McDermot, Beardslee v. 35 C. P. R.....	180
McDonald's Estate, In re, 37 C. P. R.....	257
McDonald, Goodrich v. 11 C. P. R.....	147
McDonald, Goodrich v. 16 C. P. R.....	233
McDonald, Hayward v. 7 C. P. R.....	100
McDonald, Hill v. 19 C. P. R.....	431
McDonald v. Kiefferdorf, 22 C. P. R.....	105
McDonald v. Leubusher, 28 C. P. R.....	265
McDonald v. Metropolitan Street Railway, 30 C. P. R.....	61
McDonald v. Peet, 7 C. P. R.....	200
McDonald, People ex rel. Lubischer v. 27 C. P. R.	297
McDonald v. Sheffer, 1 Law Rec.....	176
McDonald, Squire v. 23 C. P. R.....	150
McDonald v. Woodbury, 3 C. P. R.....	387
McDonnell, Fagan v. 37 C. P. R.....	335
McDonough v. The Mayor, etc., 1 Law Rec.....	61
McDowell, Estate of, 1 Law Rec.	85
McDougal v. Gray, 15 C. P. R.....	237
McElroy v. Baer, 9 C. P. R.....	133
McElroy, Simis v. 20 C. P. R.....	288
McElwee Mfg. Co., Dayton v. 22 C. P. R.....	227
McEntegart, Maas v. 27 C. P. R.....	15
McEntyre v. Tucker, 23 C. P. R.....	171
McFadden, Hatton v. 15 C. P. R.....	42
MacFadden, Riddle v. 38 C. P. R.....	142
McFarland, Cassidy v. 23 C. P. R.....	65
McGarvey, Cole v. 6 C. P. R.....	305
McGean v. MacKellar, 6 C. P. R.....	169
McGibbon, Haulenbeck v. 20 C. P. R.....	406
McGill v. Weill, 19 C. P. R.....	43
McGillicuddy v. Farmers Loan and Trust Co., 28 C. P. R.	381
McGinley v. Bank of Savings, 1 Law Rec.....	9
McGoldrick, Gottchins v. 24 C. P. R.....	293

	Page
McGovern v. Bulman-Warner Paint Co., 28 C. P. R.	212
McGown v. Underhill, 37 C. P. R.	274
McGown v. Underhill, 38 C. P. R.	116
McGrandle, Neeley v. 4 C. P. R.	327
McGregor, Wilson v. 20 C. P. R.	36
McGucken, Boon v. 23 C. P. R.	115
McGuire, Gannon v. 30 C. P. R.	18
McGuire, Estate of, 2 Law Rec.	70
McHugh v. Metropolitan Street Railway Co., 37 C. P. R.	315
McIlhanney v. Magie, 12 C. P. R.	27
McIlhanney v. Magie, 13 C. P. R.	16
McIntire, O'Donnell v. 9 C. P. R.	370
McIntyre v. German Savings Bank, 20 C. P. R.	209
McIntyre v. Sanford, 2 C. P. R.	306
McIntyre v. Smathers, 39 C. P. R.	243
McIntyre v. Strong, 2 C. P. R.	36
McIntyre v. Tucker, 29 C. P. R.	185
McIntyre v. Tucker, 3 Law Rec.	69
McIntyre v. Wynne, 21 C. P. R.	208
McIver, Crain v. 2 Law Rec.	60
McKane v. Democratic General Committee of Kings Co., 14 C. P. R.	126
McKeaggan v. Post, 38 C. P. R.	69
MacKellar, McGean v. 6 C. P. R.	169
MacKellar v. Rogers, 9 C. P. R.	6
McKean v. National Life Association, 28 C. P. R.	146
McKenna v. Bolger, 8 C. P. R.	127
McKenna v. Duffy, 22 C. P. R.	366
McKenna, Gilbert v. 25 C. P. R.	143
McKenzie, Hotaling v. 7 C. P. R.	320
McKeon v. N. Y. C. & H. R. R. Co., 2 Law Rec.	5
McKiernan, Estate of, 4 C. P. R.	218
McKinney, Southerland v. 18 C. P. R.	216
McKnight v. City of New York, 37 C. P. R.	230
McLachlin v. Brett, 2 C. P. R.	194
McLaughlin, New Home S. M. Co. v. 3 Law Rec.	102

	Page
McLaughlin v. Bieber, 29 C. P. R.	17
McLaughlin, Lee v. 16 C. P. R.	151
McLaren, Estate of, 1 Law Rec.	148
McLean v. Brennen, 3 Law Rec.	127
McLean, Kipp v. 7 C. P. R.	389
MacLean, Nichols v. 7 C. P. R.	132
McLean v. St. Paul & Chicago R. R. Co., 9 C. P. R.	394
McLean, Utter v. 17 C. P. R.	150
McLear, O'Shea v. 15 C. P. R.	69
McLeod v. Moore, 15 C. P. R.	77
Moloughney v. Kavanaugh, 3 C. P. R.	253
McMahan v. Seaman's Bank for Savings, 1 Law Rec.	214
McMahon, Isear v. 25 C. P. R.	217
McMann, Pope v. 2 Law Rec.	111
McMaster, Estate of David, 12 C. P. R.	177
McMaster, Estate of David, 14 C. P. R.	195
McManus v. Reynolds, 1 Law Rec.	134
McNally, Henderson v. 28 C. P. R.	174
McNamara v. Goldan, 39 C. P. R.	83
McNamara v. Harris, 4 C. P. R.	76
McNamara, Matter of, 30 C. P. R.	223
McNamara v. Nolan, 25 C. P. R.	35
McNamee, Larkin v. 35 C. P. R.	276
McNeirney, Keeler v. 6 C. P. R.	363
McVey v. Security Mutual Life Insurance Co., 39 C. P. R.	255
McNaughton, Thayer v. 18 C. P. R.	3
McNulty v. Scolley, 4 C. P. R.	250
McQueen, Blankman v. 19 C. P. R.	291
McQuiglan v. Delaware L. & W. R. R. Co., 21 C. P. R.	396
McRavey v. Barto, 37 C. P. R.	173
McRoberts v. Poolley, 12 C. P. R.	139
McSkiman v. Knowlton, 20 C. P. R.	274
McSorley, Arnow v. 3 Law Rec.	25
McSorley, Estate of, 1 Law Rec.	171

	Page
McVitey v. Stanton, 20 C. P. R.	409
Maas v. Cunard Steamship Co., 26 C. P. R.	155
Maas v. Ellis, 12 C. P. R.	323
Maas v. McEntegart, 27 C. P. R.	15
Macauley v. Brownell, etc. Printing Co., 5 C. P. R.	431
Macbauer v. Ludwig, 1 Law Rec.	245
Mace v. Scott, 8 C. P. R.	200
Mack v. Cohn, 2 C. P. R.	122
Mack, Hogg v. 17 C. P. R.	338
Mackey, Franklin Bank Note Co. v. 28 C. P. R. .	93
Mackey, Heckman v. 13 C. P. R.	11
MacDonald, People ex rel v. Grant, 10 C. P. R..	171
MacDonald, Steele v. 4 C. P. R.	227
Macfarlane v. Cass, 1 Law Rec.	255
Machin v. Lamar Ins. Co., 2 C. P. R.	28
MacWhinnie v. Cameron, 19 C. P. R.	168
Madden v. Lennon, 3 Law Rec.	54
Maddock v. Stevens, 15 C. P. R.	248
Magee, McIlhanney v. 13 C. P. R.	16
Magie, McIlhanney v. 12 C. P. R.	27
Magnolia Anti-Friction Metal Co., Goldmark v. 27 C. P. R.	419
Magnolio, Goldmark v. 3 Law Rec.	115
Magnolia Metal Co., Lawler v. 25 C. P. R.	235
Magnolia Metal Co., Sugden v. 32 C. P. R.	18
Maguire v. Doherty, 1 Law Rec.	1
Maier v. O'Connor, 1 C. P. R.	158
Maher v. Garry, 1 Law Rec.	31
Mahon v. Mahon, 5 C. P. R.	58
Mahon, Smith v. 2 C. P. R.	55
Maiberger, Bode v. 12 C. P. R.	53
Maine Produce Co. v. Alexander, 37 C. P. R.	250
Maine Steamship Co., Rubin v. 37 C. P. R.	297
Mallary v. Allen, 7 C. P. R.	287
Mallen v. Hall, 37 C. P. R.	188
Malcolm v. Hamill, 4 C. P. R.	221
Malcolm, Hatfield v. 23 C. P. R.	197

	Page
Mallon, Estate of, 13 C. P. R.	205
Mallory v. Bowe, 5 C. P. R.	241
Mallow v. Lennon, 27 C. P. R.	166
Maltby-Henley Co. v. Deane, 28 C. P. R.	338
Maltbie, Schiller v. 11 C. P. R.	307
Mander v. Cromwell, 24 C. P. R.	368
Mang, Matter of, 5 C. P. R.	162
Mangan, Ingersol v. 1 C. P. R.	151
Mandel, Valentine v. 19 C. P. R.	155
Mandeville v. Colwell, 1 Law Rec.	256
Manhattan R. R. Co., Abendroth v. 9 C. P. R.	406
Manhattan Construction Co., McConnell v. 16 C. P. R.	310
Manhattan Metropolitan Street Railway, Far- rell v. 30 C. P. R.	119
Manhattan Railway Co., Binns v. 18 C. P. R. 42 note	42 note
Manhattan Railway, Bechtel v. 2 Law Rec.	105
Manhattan Railway Co., Bruen v. 20 C. P. R. ...	127
Manhattan Railway Co., Dode v. 23 C. P. R. ...	180
Manhattan Co. v. Dunn, 13 C. P. R.	166
Manhattan R. R. Co., Eggers v. 21 C. P. R.	403
Manhattan Ry. Co., Farley v. 38 C. P. R.	459
Manhattan R. R. Co., Feely v. 6 C. P. R.	414
Manhattan Railway Co., Fink v. 18 C. P. R.	141
Manhattan Railway Co., Fry v. 23 C. P. R.	99
Manhattan Railway Co., Hayward v. 17 C. P. R.	155
Manhattan Railway Co., Hamilton v. 18 C. P. R.	164
Manhattan Railway Co., Hunter v. 22 C. P. R. ...	309
Manhattan R. Co., Livingston v. 21 C. P. R. 100, 309	100, 309
Manhattan R. R. Co. v. O'Sullivan, 25 C. P. R. ...	233
Manhattan Railway Co., Powers v. 20 C. P. R. ...	78
Manhattan R. R. Co., Shephard v. 21 C. P. R. ...	453
Manhattan Railway Co. v. Sullivan, 1 Law Rec.	183
Manhattan R. R. Co., Treanor v. 21 C. P. R.	364
Manhattan R. R. Co., Underhill v. 21 C. P. R.	441
Manhattan R. R. Co., Zelmanovitz v. 24 C. P. R.	402
Manhattan Savings Institution, Knights of Pythias v. 25 C. P. R.	44

	Page
Manheim, Broadway Trust Co. v 34 C. P. R....	310
Manne, Webber v. 11 C. P. R.	64
Maney v. Maney, 39 C. P. R.	168
Manning, Amy v. 17 C. P. R.	175
Manning, Amy v. 22 C. P. R.	94
Mannion v. Broadway and Seventh Ave. Railroad Co., 18 C. P. R.	40
Manning v. Gould, 1 C. P. R.	216
Manning v. Gould, 3 C. P. R.	58
Manning, Henderson v. 5 C. P. R.	221
Manning, Tuck v. 17 C. P. R.	175
Manning, Tuck v. 22 C. P. R.	94
Manning, Wiltshire v. 17 C. P. R.	175
Manning, Wilshire v. 22 C. P. R.	94
Manning v. Wray, 1 Law Rec.	226
Maney, Simpson v. 37 C. P. R.	206
Mannis, Case v. 19 C. P. R.	296
Manufacturer's Natl. Bank v. Hall, 21 C. P. R..	131
Marco, Parker v. 21 C. P. R.	371
Marcuse, et al., Stern v. 39 C. P. R.	251
Marden v. Marden, 27 C. P. R.	279
Morgan Stern, Will of, 24 C. P. R.	58
Marie v. Garrison, 7 C. P. R.	40, 113
Market Natl. Bank v. Pacific Natl. Bank, 1 C. P. R.	330
Market Nat. Bank v. Pacific Nat. Bank, 10 C. P. R.	19
Markland, Corn Exchange Bank v. 28 C. P. R...	412
Markham, Ross v. 5 C. P. R.	81
Marks v. Epstein, 13 C. P. R.	203
Marks, Billwiller v. 21 C. P. R.	162
Marks, Lang v. 3 C. P. R.	287
Marks v. La Societe Anongme de l' Union des Papeteries, 22 C. P. R.	201
Marks v. Murphy, 27 C. P. R.	179
Marks v. Pennut, 1 Law Rec.	227
Marr, Stearns v. 34 C. P. R.	300
Marsh, Pierce v. 15 C. P. R.	49

	Page
Marshall v. Link, 20 C. P. R.	109
Marshall, Stuebing v. 2 C. P. R.	77
Marsily, Taft v. 14 C. P. R.	415
Marsilly, Todd v. 15 C. P. R.	347
Martin v. Albro, 2 C. P. R.	70
Martin v. Bernheim, 24 C. P. R.	441
Martin, Brady v. 19 C. P. R.	134
Martin Cantine Co. v. Warshauer, 23 C. P. R. .	379
Martin v. Erie Preserving Co., 14 C. P. R.	224
Martin, First Natl. Bank of Canadaigua v. 15 C. P. R.	324
Martin v. Gross, 16 C. P. R.	235
Martin v. Gould, 13 C. P. R.	45
Martin v. Home Bank, 28 C. P. R.	71
Martin, in re, 7 C. P. R.	399
Martin, People ex rel. v. Walters, 7 C. P. R.	406
Martin v. Raffin, 23 C. P. R.	59
Martin v. Rector, 2 C. P. R.	134
Martin, Weil v. 1 C. P. R.	133
Martine, Greene v. 1 C. P. R.	129
Marvin v. Brandy, 18 C. P. R.	343
Marvin v. Denike, 3 Law Rec.	93
Marvin v. Marvin, 22 C. P. R.	274
Marx v. Gross, 18 C. P. R.	352
Marx v. Jones, 8 C. P. R.	49
Marx v. Manhattan Railway Co., 18 C. P. R.	384
Marx, Matter of, 38 C. P. R.	53
Marx v. Tailer, 12 C. P. R.	227
Maryland Club, in re, 1 Law Rec.	218
Mason v. Dutcher, 24 C. P. R.	345
Mason, Libbey v. 11 C. P. R.	250
Mason, Libbey v. 16 C. P. R.	191
Mason v. Mason, 34 C. P. R.	193
Mass v. Lafrentz, 23 C. P. R.	238
Massen, Effray v. 22 C. P. R.	59
Massena Springs & Fort Covington R. R. Co., Cunningham v. 16 C. P. R.	244

	Page
Masonic Guild & Mutual Benefit Association, People v. 22 C. P. R.	74, 79
Mast, Clement v. 39 C. P. R.	249
Masterson v. Mayor, 4 C. P. R.	317
Masters, Estate of, 1 C. P. R.	459
Mathews, Boylan v. 3 C. P. R.	38
Mathews, Schwartzchild v. 3 Law Rec.	130
Mathot v. North River Bank, 16 C. P. R.	314
Matsell, Doherty v. 11 C. P. R.	392
Matsell, Doherty v. 9 C. P. R.	103
Mattes v. Pause, 22 C. P. R.	41
Matteson, Cook v. 19 C. P. R.	321
Matteson v. Palser, 31 C. P. R.	198
Matthews v. Matthews, 14 C. P. R.	399
Matthews v. Smith, 3 C. P. R.	157
Matthews v. Smith, 9 C. P. R.	165
Matthews v. Steitz, 5 C. P. R.	235
Matthiessen, Fox v. 24 C. P. R.	285
Matter of Alexandre, 25 C. P. R.	42
Matter of Althause, 32 C. P. R.	158
Matter of Andrews, 30 C. P. R.	377
Matter of Antoine Ruppaner, 25 C. P. R.	159
Matter of Armory Board, 30 C. P. R.	123
Matter of Asche, 33 C. P. R.	177
Matter of Ashmore, 35 C. P. R.	268
Matter of Baldwin, 25 C. P. R.	6
Matter of Bennington, 38 C. P. R.	240
Matter of Brenner, 32 C. P. R.	88, 136
Matter of Broadway Ins. Co., 27 C. P. R.	154
Matter of Board of Publication &c., 27 C. P. R.	109
Matter of Burbank, 34 C. P. R.	247
Matter of Burke, 38 C. P. R.	241
Matter of Cannice, 38 C. P. R.	231
Matter of Chapman, 31 C. P. R.	57
Matter of Clark, 32 C. P. R.	226
Matter of Clark, 37 C. P. R.	34
Matter of Coffin, 34 C. P. R.	8
Matter of Curtiss, 26 C. P. R.	108

	Page
Matter of De Haas, 3 Law Rec.	165
Matter of DeHaas, 27 C. P. R.	336
Matter of Davenport, 32 C. P. R.	327
Matter of Davenport, 33 C. P. R.	211
Matter of Davies, Attorney-General, 32 C. P. R.	163
Matter of DeVoe, 35 C. P. R.	66
Matter of Dittrich, 38 C. P. R.	210
Matter of Elkins, 26 C. P. R.	13
Matter of Emil J. Smith, 30 C. P. R.	95
Matter of Fitch, 30 C. P. R.	1
Matter of Fitzsimmons, 33 C. P. R.	336
Matter of Friend, 3 Law Rec.	165
Matter of Friedman, 30 C. P. R.	221
Matter of Gaffney, 38 C. P. R.	303
Matter of Garvey, 28 C. P. R.	14
Matter of Gates, 31 C. P. R.	8
Matter of Gaul, 35 C. P. R.	35
Matter of Gough, 3 Law Rec.	78
Matter of Gould, 33 C. P. R.	192
Matter of Humfreville, 26 C. P. R.	368
Matter of Humfreville, 27 C. P. R.	1
Matter of Hay Foundry & Iron Works, 27 C. P. R.	80
Matter of Jane Davis, 35 C. P. R.	151
Matter of Johnson, 32 C. P. R.	381
Matter of Kaffenburgh, 38 C. P. R.	217
Matter of Killan, 33 C. P. R.	241
Matter of Klingensmith, 29 C. P. R.	69
Matter of Leggatt, 31 C. P. R.	6
Matter of Lexington Ave., 27 C. P. R.	245
Matter of Lowerre, 35 C. P. R.	259
Matter of Ludeke, 3 Law Rec.	33
Matter of McAleenan, 31 C. P. R.	230
Matter of McCarthy, 26 C. P. R.	397
Matter of McNamara, 30 C. P. R.	223
Matter of Marx, 38 C. P. R.	53
Matter of Meekin, 31 C. P. R.	239
Matter of Moehring, 27 C. P. R.	70

	Page
Matter of Muehfeld & Haynes' Piano Co., 26 C. P. R.	265
Matter of Murray Hill Bank, 26 C. P. R.	323
Matter of Murtaugh, 38 C. P. R.	79
Matter of Nutting, 33 C. P. R.	145
Matter of O'Brien, 32 C. P. R.	239
Matter of Porter, 28 C. P. R.	405
Matter of Quinn, 25 C. P. R.	227
Matter of Randall, 26 C. P. R.	250
Matter of Regan, 31 C. P. R.	387
Matter of Regan, 32 C. P. R.	98
Matter of Richmond, 32 C. P. R.	213
Matter of Rutledge, 30 C. P. R.	405
Matter of Searls, 27 C. P. R.	193
Matter of Seaman, 32 C. P. R.	194
Matter of Schoeller, 33 C. P. R.	152
Matter of Schwarmcke v. Glenny, 38 C. P. R.	344
Matter of Sheldon, 38 C. P. R.	352, 462
Matter of Smith, 33 C. P. R.	115
Matter of Spaulding, 35 C. P. R.	27
Matter of Stapleton, 33 C. P. R.	25
Matter of Steencken & Bolte, 30 C. P. R.	329
Matter of Straus, 3 Law Rec.	117
Matter of Strauss, 27 C. P. R.	291
Matter of Strohm, 38 C. P. R.	171
Matter of Thurber, 30 C. P. R.	261
Matter of Trask, 27 C. P. R.	7
Matter of Traut, 27 C. P. R.	21
Matter of Turell, 32 C. P. R.	33
Matter of Tweedie Trading Co., 35 C. P. R.	6
Matter of Tyndall, 38 C. P. R.	283
Matter of United States Trust Co., 38 C. P. R.	30
Matter of Watson, Executor, 34 C. P. R.	150
Matter of Williams, 38 C. P. R.	38
Matter of Wood, 34 C. P. R.	127
Matter of Young, 27 C. P. R.	194
Matter of Laura Leggett, 30 C. P. R.	109

	Page
Matuska and Craig Furniture Co., Bache v. 7 C.	
P. R.	86
Maurhoffer v. Mittnacht, 24 C. P. R.	420
Mautner, Roth v. 37 C. P. R.	247
Mautner, Tenney v. 1 C. P. R.	64
Max v. Brogan, 39 C. P. R.	273
Max v. Gross, 23 C. P. R.	97
Maxon, Larkins v. 11 C. P. R.	298
Maxson v. Delaware Lackawanna & Western R.	
R. Co., 14 C. P. R.	248
Mayer v. American Ins. Co., 17 C. P. R.	43
Mayer, Kronsberg v. 20 C. P. R.	80
Mayer, Morris v. 17 C. P. R.	407
Mayer, Mullen v. 23 C. P. R.	261
Mayer v. Phillips, 10 C. P. R.	227
Mayer, Schultze v. 11 C. P. R.	54
Mayer v. Schwab, 1 Law Rec.	238
Mayor &c., Augner v. 26 C. P. R.	165
Mayor etc. v. Bannan, 30 C. P. R.	188
Mayor etc., Carleton v. 5 C. P. R.	418
Mayor etc., Cohen v. 21 C. P. R.	124
Mayor, Davies v. 4 C. P. R.	290
Mayor, &c. v. Eisler, 2 C. P. R.	125
Mayor, Gutta Percha & Rubber Mfg. Co. v. 14 C.	
P. R.	19
Mayor, &c. of Huston, Gutta Percha &c. Rubber	
Manufg. Co., 12 C. P. R.	326
Mayor &c., Kelly v. 26 C. P. R.	123
Mayor &c., Kingsland v. 16 C. P. R.	323
Mayor etc., Larned v. 2 Law Rec.	205
Mayor, Masterson v. 4 C. P. R.	317
Mayor etc., Mergbach v. 30 C. P. R.	322
Mayor, etc. of New York, Consolidated Ice Co. v.	
32 C. P. R.	9
Mayor etc. of N. Y., Rochester v. 9 C. P. R.	227
Mayor etc. of N. Y., Schildwachter v. 24 C. P. R.	390
Mayor, Sinne v. 8 C. P. R.	252
Mayor, Titman v. 20 C. P. R.	376

	Page
Mayor, Townsend v. 20 C. P. R.	200
Maynard v. O'Kane & Bliss, 1 Law Rec.	203
Mazet v. Crow, 18 C. P. R.	178
Mead, Hansee v. 2 C. P. R.	175
Mead v. Hartwell, 24 C. P. R.	217
Mead, Hodgkins v. 16 C. P. R.	434
Mead, Hodgkins v. 17 C. P. R.	16
Mead, Hodgkins v. 17 C. P. R.	218
Mead v. Langford, 18 C. P. R.	293
Mead v. Smith, 3 C. P. R.	171
Mead v. Young, 8 C. P. R.	414
Meade v. Southern Tier Masonic Relief Associa- tion, 39 C. P. R.	33
Meade, Yuelin v. 1 C. P. R.	446
Meakim, Estate of, 5 C. P. R.	421
Mechanical OrguINETTE Co. v. Haynes, 39 C. P. R.	49
Mechanics Bank, O'Connor v. 22 C. P. R.	393
Mechanics National Bank v. Brackaleer, 28 C. P. R.	306
Meekin, Matter of, 31 C. P. R.	239
Meeks v. Meeks, 37 C. P. R.	270
Meeson v. Mick, 3 Law Rec.	140
Meeton & Son v. Isham Wagon Co., 15 C. P. R.	259
Megraw, Wanamaker v. 32 C. P. R.	201
Mehrbach, Finn v. 30 C. P. R.	242
Mehesy v. Kahn, 6 C. P. R.	33
Meigs v. Willis, 5 C. P. R.	106
Meiggs v. Willis, 8 C. P. R.	125
Meisner v. Brennen, 21 C. P. R.	37
Mela v. Geis, 3 C. P. R.	152
Meinhold, Bradley Salt Co. v., 28 C. P. R.	86
Melborne v. Royal Benefit Society, 1 Law Rec.	193
Meldrum, Taylor v. 6 C. P. R.	235
Mellen v. Mellin, 21 C. P. R.	301
Mellens v. Mellens, 22 C. P. R.	39
Mengis v. Fifth Ave. R. R. Co., 24 C. P. R.	131
Menke v. Sun Printing & P. Co., 1 Law Rec.	156
Menolithic Drain etc. v. Dewsnap, 1 Law Rec.	129

	Page
Merchants Natl. Bank v. Sheehan, 9 C. P. R.	1
Merchants National Bank v. Hgemeyer, 25 C. P.	
R.	332
Merchant v. Sessions, 5 C. P. R.	24
Mercantile Bank v. Anderson, 2 Law Rec.	5
Mercantile National Bank, Foley, Jr. v. 24 C. P.	
R.	249
Mercantile Safe Dep. Co. v. Hassey, 1 Law Rec. 11, 60	
Merges v. Ringler, 3 Law Rec.	197
Meriden Britiannia Co., Stephens v. 30 C. P. R..	192
Merkle, Kepler v. 9 C. P. R.	284
Merriam v. Johnson, 38 C. P. R.	190
Merriam v. The Wood etc. Co., 2 Law Rec.....	74
Merriam v. Wood & Parker Lithographic Co., 27	
C. P. R.	178
Merrifield, Bell v. 14 C. P. R.	146
Merrick v. Hill, 23 C. P. R.	413
Merrick, Sire v. 17 C. P. R.	325
Merrill & Baker v. Woolworth, 39 C. P. R.	108
Merrill, Howitt v. 16 C. P. R.	374
Merrill, Gallagher v. 26 C. P. R.	242
Merritt, Churchman v. 15 C. P. R.	245
Merritt v. Gouley, 20 C. P. R.	43
Merritt v. Judd, 18 C. P. R.	159
Merritt v. Smith, 29 C. P. R.	369
Mertins v. Fitzmaller, 17 C. P. R.	277
Mershon v. Leonard Scott Publishing Co. 4 C. P.	
R.	319
Mertz v. Fenouillet, 26 C. P. R.	179
Merzbach v. Mayor etc., 30 C. P. R.	322
Meo v. Meo, 15 C. P. R.	308
Metcalfe v. Ryman, 1 Law Rec.	227
Methodist Church, Hedges v. 2 Law Rec.	163
Metropolitan Addressing Co. v. Goodenough, 21	
C. P. R.	268
Metropolitan Concert Garden Co. v. Abbey, 5 C.	
P. R.	26

	Page
Metropolitan Messenger Co., Hallett v. 32 C. P.	
R.	346
Metropolitan Elevated R. R. Co., Caro v. 2 C. P.	
R.	371
Metropolitan Realty Co., Deeves v. 25 C. P. R. ..	276
Metropolitan Elevated R. R. Co. v Duggin, 19	
C. P. R.	255
Metropolitan Elevated R. R. Co., Lazarus v. 24	
C. P. R.	261
Metropolitan El. R. R. Co., Lynch v. 21 C. P. R.	420
Metropolitan Elevated R. R. Co., Myers v. 19 C.	
P. R.	448
Metropolitan R. R. Co., Weil v. 24 C. P. R.	85
Metropolitan Life Ins. Co., Holden v. 31 C. P. R.	175
Metropolitan Street R. R. Co., Connon v. 33 C.	
P. R.	269
Metropolitan Street R. R. Co., Curtin v. 27 C.	
P. R.	97
Metropolitan Street Railway, Gamby v. 30 C.	
P. R.	206
Metropolitan Street R. R. Co., Griffiths v. 33 C.	
P. R.	106, 184
Metropolitan Street Railway Co., Irwin v. 28 C.	
P. R.	196
Metropolitan Street Railway Co., McDonald v.	
30 C. P. R.	61
Metropolitan Street Railway Co., McHugh v. 37	
C. P. R.	315
Metropolitan Street Railway Co., Morris v. 30	
C. P. R.	371
Metropolitan Street R. R. Co., O'Brien v. 27 C. P.	
R.	152
Metropolitan Street Railway Co., Oisher v. 35 C.	
P. R.	240
Metropolitan Street Railway Co., Rochford v.	
30 C. P. R.	285
Metropolitan Street R. R. Co., Willis v. 33 C. P.	
R.	199

	Page
Metropolitan Telephone & Telegraph Co., Stern v.	
26 C. P. R.	353
Metzger, Rankine v. 32 C. P. R.	370
Mevey, Fair v. 28 C. P. R.	245
Mexican National Construction Co., Brooks v. 3	
C. P. R.	36
Meyer, Barnes v. 25 C. P. R.	372
Meyer, Douglass v. 22 C. P. R.	345
Meyers v. Herbert, 22 C. P. R.	216
Meyer v. Meyer, 1 Law Rec.	224
Meyer v. Rasquin, 38 C. P. R.	473
Meyer, Roof v. 8 C. P. R.	60
Meyer, Rose v. 7 C. P. R.	219
Meyer, Segelken v. 5 C. P. R.	1, 258
Meyer, Spliess v. 20 C. P. R.	157
Meyer, Williams v. 11 C. P. R.	42
Meyer v. Wilson, 1 Law Rec.	187
Meyerson v. Levy, 38 C. P. R.	257
Michaels v. Fishel, 31 C. P. R.	29
Michaels v. Fishel, 32 C. P. R.	310
Michael v. Colegrove, 22 C. P. R.	297, 309
Michelsen, Spies v. 25 C. P. R.	188
Michalda, Steinhardt v. 15 C. P. R.	323
Middlesex R. R. Co., Green v. 24 C. P. R.	272
Middlesex Valley Railway Co., Green v. 28 C. P.	
R.	152
Middletown, City of, in re, 21 C. P. R.	201
Middletown, City of, in re, 22 C. P. R.	12
Mick, Meeson v., 3 Law Rec.	140
Millard, Couch v. 8 C. P. R.	431
Miller Brewing Co., Farracca v. 39 C. P. R.	116
Miller v. Davis, 20 C. P. R.	414
Miller v. Davidson, 3 C. P. R.	389
Miller v. Edison Electric Illuminating Co., 35 C.	
P. R.	246
Miller v. Edwards, 1 Law Rec.	95
Miller, Estate of, 3 Law Rec.	16

	Page
Miller, First Natl. Bank of Amsterdam v. 27 C. P. R.	167
Miller, Howell v. 5 C. P. R.	164
Miller, Holden v. 2 Law Rec.	57
Millbury v. Holtzberg, 28 C. P. R.	179
Miller v. Johnson, 10 C. P. R.	205
Miller, People ex rel. Krohn v. 9 C. P. R.	149
Miller v. McClosky, 1 C. P. R.	252
Miller, Muser v. 3 C. P. R.	388
Miller v. New York and North Shore Railway Co., 35 C. P. R.	280
Miller v. Nevins, 37 C. P. R.	365
Miller, People ex rel. v. Ryder, 20 C. P. R.	172
Miller v. Quincy, 34 C. P. R.	118
Miller v. Ricci, 30 C. P. R.	155
Miller, Rowland v. 22 C. P. R.	25
Miller, Sayres v. 10 C. P. R.	69
Miller v. Weaver, 3 Law Rec.	4
Miller v. Wood, 18 C. P. R.	6
Miller v. Woodhead, 17 C. P. R.	102
Millikin Bros., Clarendon v. 38 C. P. R.	359
Milliken v. Thomson, 12 C. P. R.	168
Mills v. Davis, 16 C. P. R.	417
Mills, Dorr v. 3 C. P. R.	7
Mills & Gibbs v. Starin, 39 C. P. R.	338
Mills v. Goodenough, 18 C. P. R.	151
Milne, Webb v. 10 C. P. R.	27
Miranda, Hingston v. 12 C. P. R.	439
Miner, Estate of, 2 Law Rec.	143
Mingst v. Bleck, 7 C. P. R.	314
Minto v. Bauer, 17 C. P. R.	314
Ministers, Elders and Deacons of the Reformed Low Church of Harlem, Jorgensen v. 23 C. P. R.	232
Missouri Pacific Railway Co., Stanton v. 15 C. P. R.	296
Mitchell, Burnett v. 29 C. P. R.	201
Mitchell v. Mitchell, 17 C. P. R.	346

	Page
Mitchell, People v. 21 C. P. R.	111
Mitchell v. Piqua Club Association, 25 C. P. R.	139
Mitchell, Sheffield v. 2 Law Rec.	202
Mitchell, Wood v. 17 C. P. R.	346
Mittrnacht, Maurhoffer v. 24 C. P. R.	420
Mixbel v. N. Y., N. H. & H. R. R. Co., 27 C. P. R.	56
Mock v. Saile, 17 C. P. R.	121
Mockinridge, Lucky v. 37 C. P. R.	78
Moderno, Estate of, 22 C. P. R.	72
Moehring, Estate of, 3 Law Rec.	201
Moehring, Matter of, 27 C. P. R.	70
Moench v. Yung, 18 C. P. R.	259
Moffatt v. Fulton, 22 C. P. R.	126
Moffatt v. Herman, 8 C. P. R.	369
Moffatt v. Herman, 17 C. P. R.	357
Moffett v. Deom, 8 C. P. R.	85
Mohr v. Dorschel, 15 C. P. R.	22
Moir v. Moir, 1 Law Rec.	242
Mole v. N. Y. O. & W. R. R. Co., 38 C. P. R.	64
Moll, Bulkley v. 2 Law Rec.	154
Monahan v. Judson, 1 Law Rec.	91
Monel, in re, 22 C. P. R.	377
Monolithic Drain & Conduit Co. v. Dewsnap, 25 C. P. R.	380
Monett, People ex rel. v. Grant, 10 C. P. R.	171
Monroe v. Smith, 17 C. P. R.	158
Montgomery, Hepburn v. 5 C. P. R.	244
Montgomery, Perkins v. 2 Law Rec.	119
Moody v. Bekdon, 21 C. P. R.	89
Moody v. Steele, 10 C. P. R.	67
Moody v. Steele, 11 C. P. R.	205
Moon v. Trimmer, 17 C. P. R.	99
Mooney v. N. Y. Elevated R. R., 31 C. P. R.	40
Mooney, People ex rel. v. Walsh, 15 C. P. R.	19
Mooney v. Ryerson, 8 C. P. R.	435
Moore, Channing v. 13 C. P. R.	349
Moore, Eagan v. 2 C. P. R.	300
Moore v. Hanover Natl. Bank, 3 Law Rec.	86

	Page
Moore, Huntington v. 20 C. P. R.	160
Moore, Logan v. 27 C. P. R.	241
Moore, Logan v. 3 Law Rec.	99, 119
Moore, McLeod v. 15 C. P. R.	77
Moore v. New York Elevated R. R. Co., 18 C. P. R.	145
Moore, Ruckgaber Sr. v. 31 C. P. R.	310
Moore v. Winans, 2 Law Rec.	153
Moorehead v. Holden, 7 C. P. R.	188
Moorehouse v. Moorehouse, 11 C. P. R.	20
Moorwood v. Curtis, 13 C. P. R.	218
Morse v. Press Publishing Co., 33 C. P. R.	59
Moran, Post v. 1 C. P. R.	222
Moretti, Flavilla v. 18 C. P. R.	388
Morning Journal Assn., Whiton v. 3 Law Rec. ...	76
Morning Journal Association, Whiton v. 27 C. P. R.	224
Morrell, Weiss v. 23 C. P. R.	352
Morris, Harnet v. 10 C. P. R.	223
Morris, in re, 13 C. P. R.	56
Morris v. Mayor &c., 17 C. P. R.	407
Morris v. Metropolitan Street Railway Co., 30 C. P. R.	371
Morris v. N. Y., Ontario & Western R. R. Co., 25 C. P. R.	169
Morrissey v. Leddy, 11 C. P. R.	438
Morrissey, Livingston v. 6 C. P. R.	28
Morrissey, Wendell v. 15 C. P. R.	311
Morrison v. Lewis, 4 C. P. R.	437
Morrison v. National Rubber Co., 13 C. P. R. ...	233
Morrisy, Colton v. 38 C. P. R.	474
Morse, Hammacher v. 15 C. P. R.	321
Morse, Grimke v. 18 C. P. R.	37
Morse v. Press Publishing Co., 32 C. P. R.	152
Mortimer, Ruige v. 38 C. P. R.	75
Morton v. Chesley, 25 C. P. R.	230
Morton v. Palmer, 21 C. P. R.	95
Morton, Viadero v. 6 C. P. R.	238

	Page
Morehouse, Overheiser v. 8 C. P. R.	11
Morgan, Estate of Edward, 8 C. P. R.	77
Morgan, Estate of L. L. 8 C. P. R.	155
Morgan v. Mutual Benefit Life Ins. Co., 39 C. P. R.	317
Morgan, Pierson v. 17 C. P. R.	124
Morton, Von Hess v. 16 C. P. R.	333
Mortimer, Neuman v. 34 C. P. R.	164
Moschcowitz, McCall v. 10 C. P. R.	107
Mosetter, Pratt v. 9 C. P. R.	351
Moses, Buckley v. 23 C. P. R.	28
Moshane v. Pinkham, 22 C. P. R.	173
Mosher, Clark v. 13 C. P. R.	215
Moss, Catlin v. 2 C. P. R.	201
Moss, Perkins v. 39 C. P. R.	207
Moss, Sophia, Estate of, 24 C. P. R.	438
Moss, Stern v. 6 C. P. R.	184
Mott, Goetz v. 15 C. P. R.	11
Mott, Washburn v. 19 C. P. R.	439
Moulton v. Cornish, 21 C. P. R.	343
Moulton v. Moulton, 13 C. P. R.	420
Mount Vernon, Village of, Hufnagel v. 15 C. P. R.	148
Mt. Vernon Suburban Land Co., St. Paul's Church v. 38 C. P. R.	323
Muehfeld & Haynes Piano Co. Looschen v. 26 C. P. R.	91
Muehfeld & Haynes Piano Co., Matter of, 26 C. P. R.	265
Muckle, Hannaman v. 20 C. P. R.	296
Mugett, Bartlett v. 23 C. P. R.	288
Muir, in re, 14 C. P. R.	195
Mulford v. Yager, 17 C. P. R.	371
Mullen v. Mullen, 39 C. P. R.	357
Mullenhoff v. Scherrer, 15 C. P. R.	160
Mueller, Estate of, 2 Law Rec.	67
Muller, Hay v. 23 C. P. R.	261
Muller v. Levy, 17 C. P. R.	113
Muller v. Mayor, 23 C. P. R.	261

	Page
Mulligan, Barson v. 32 C. P. R.	251
Mulligan v. Cannon, 25 C. P. R.	348
Mulligan v. O'Brien, 38 C. P. R.	444
Mulligan, Seiford v. 28 C. P. R.	373
Mulligan v. Seeford, 3 Law Rec.	85, 110
Mullin, Burns v. 29 C. P. R.	344
Mullin, People ex rel v. Brotherhood of Station- ary Engineers, 19 C. P. R.	175
Mundt v. Glockner, 27 C. P. R.	120
Mundt v. Glockner, 30 C. P. R.	149
Munn v. City of New York, 31 C. P. R.	190
Munson v. Curtis, 15 C. P. R.	131
Munzinger v. The Courier Co., 24 C. P. R.	175
Munoz, Wilson v. 6 C. P. R.	71
Murphy, Bullen v. 8 C. P. R.	266
Murphy v. Board of Education of Yonkers, 17 C. P. R.	170
Murphy, Cowley v. 19 C. P. R.	46
Murphy, Crowley v. 3 Law Rec.	189
Murphy, Dare v. 12 C. P. R.	389
Murphy v. Gold & Stock Telegraph Co., 18 C. P. R.	43
Murphy, Healy v. 21 C. P. R.	13
Murphy, Marks v. 27 C. P. R.	179
Murphy v. Murphy, 1 Law Rec.	256
Murphy, Ryan v. 38 C. P. R.	249
Murphy, Sayles v. 8 C. P. R.	325
Murphy's Will, in re, 24 C. P. R.	413
Murray, Bliss v. 17 C. P. R.	64
Murray v. Cantor Reed & Co., 26 C. P. R.	81
Murray v. Hankin, 3 C. P. R.	342
Murray Hill Bank, in re, 1 Law Rec.	210
Murray Hill Bank, Matter of, 26 C. P. R.	323
Murray Hill Bank, People v. 26 C. P. R.	1
Murray, People ex rel, Allen v. 23 C. P. R.	71
Murtaugh, Matter of 38 C. P. R.	79
Murtha v. Curley, 3 C. P. R.	1
Mussinam v. Hatton, 23 C. P. R.	400

	Page
Muser v. Lewis, 6 C. P. R.	135
Muser v. Miller, 3 C. P. R.	388
Muser v. Robertson, 4 C. P. R.	112
Mutual Life Assoc., Paterson v. 19 C. P. R.	262
Mutual Benefit Life Ins. Co., Morgan v. 39 C. P. R.	317
Mutual Life Insurance Co. v. Granniss, 39 C. P. R.	162
Mutual Life Ins. Co., Harris v. 18 C. P. R.	195
Mutual Life Ins. Co. v. Hill, 1 Law Rec.	93
Mutual Life Insurance Co. v. Robinson, 28 C. P. R.	34
Mutual Milk & Cream Co. v. Tietjen, 34 C. P. R... ..	29
Mutual Trust Fund Life Assn., Schwan v. 9 C. P. R.	82
Muxlow, Forbes v. 18 C. P. R.	239
Muxlow, Newell Universal Mill Co. v. 16 C. P. R.	153
Muxlow, Newell Universal Mill Co. v. 17 C. P. R.	238
Myerle, Continental Natl. Bank v. 3 Law Rec... ..	22
Myers v. Clark, 2 Law Rec.	169
Myers v. Bolton, 28 C. P. R.	397
Myers, Gannon v. 11 C. P. R.	187
Myers v. Lederer, 38 C. P. R.	403
Myers v. Metropolitan Elevated R. R. Co., 19 C. P. R.	448
Myers v. Rosenback, 23 C. P. R.	363
Myers v. Stephens, 38 C. P. R.	432
Myers, S. D. Co., Smith v. 3 Law Rec.	119
Myer's Will, Matter of, 35 C. P. R.	329
Myers, Wynkoop v. 17 C. P. R.	443
Myerson v. Levy, 38 C. P. R.	257

N

Nagel v. Lutz, 29 C. P. R.	305
Nally, Brady v. 23 C. P. R.	384
Nash, Hofferberth v. 37 C. P. R.	93

	Page
Nash, Hofferberth v. 38 C. P. R.	259
Nash, People ex rel., Union Insurance Co. v. 13 C. P. R.	301
Nash, People ex rel., Union Insurance Co. v. 16 C. P. R.	83
Nash, Stirn v. 19 C. P. R.	184
Nassau Show Case Co., Beebe v. 29 C. P. R.	392
Nanz v. Oakley, 19 C. P. R.	246
Nanz v. Oakley, 21 C. P. R.	71
Nathans v. Hope, 5 C. P. R.	401
National Bank of Commerce, Hobbs v. 30 C. P. R.	24
National Bank of Dep. v. Waterbury, 1 Law Rec.	35
National Bank of Port Jervis v. Hansee, 7 C. P. R.	351
National Broadway Bank v. Barker, 20 C. P. R.	338
National Broadway Bank v. Barker, 21 C. P. R.	120
National Broadway Bank, First National Bank of Paterson v. 2 Law Rec.	30
National Broadway Bank v. Hitch, 23 C. P. R.	10
National City Bank, Wells v. 29 C. P. R. . .	158, 193
National Carb. Co. v. Standard Aerating Co., 1 Law Rec.	220, 244
National Contracting Co. v. Hudson River Water Power Co., 34 C. P. R.	315
National Contracting Co. v. Hudson River Water Power Co., 35 C. P. R.	285
National Exchange Bank v. Burkhalter, 22 C. P. R.	414
National Fire Ins. Co., Cross v. 17 C. P. R.	199
National Life Ins. Co. v. Walsh, 1 Law Rec.	253
National Life Association, McKean v. 28 C. P. R.	146
National Park Bank v. Salomon, 17 C. P. R.	8
National P. A. of S. Fitters v. Cummings, 3 Law Rec.	73
National Press Co. v. Brooks, 1 Law Rec.	195
National Protective Assn. of Steam Fitters & Helpers v. Cummings, 31 C. P. R.	145

	Page
National Protective Assn. v. Steam Fitters, 3 Law Rec.	45
National Rubber Co., Morrison v. 13 C. P. R.	233
National Trust Co., in re, 4 C. P. R.	202
Nauman v. Braum, 20 C. P. R.	77
Najes, Matter of, 39 C. P. R.	86
Naylor v. Lane, 5 C. P. R.	149
Nederburg, Hedden v. 29 C. P. R.	394
Neeley, Estate of, 3 Law Rec.	137
Neeley v. McGrandle, 4 C. P. R.	327
Negley v. Short, 18 C. P. R.	45
Negus v. City of Brooklyn, 1 C. P. R.	471
Negus, People ex rel. v. Dwyer, 2 C. P. R.	379
Negus, Pope v. 14 C. P. R.	406
Nehrboss v. Bliss, 2 C. P. R.	39
Nehresheimer v. Bowe, 3 C. P. R.	363, 368
Neiderweisen, Lewisohn v. 9 C. P. R.	431
Nelke, Zivi v. 23 C. P. R.	57
Nelson, Ensign v. 14 C. P. R.	436
Nelson v. Village of Oneida, 27 C. P. R.	283
Nembach, Weiler v. 13 C. P. R.	380
Nembach, Weiler v. 16 C. P. R.	375
Nestor v. Bischoff, 20 C. P. R.	12
Netherlands American Steam Navigation Co., Hurwitz v. 2 Law Rec.	38
Neuman v. Mortimer, 34 C. P. R.	164
Neuss, Bame v. 2 C. P. R.	185
Nevens, Arnot v. 30 C. P. R.	239
Nevins, Müller v. 37 C. P. R.	365
Newark City Insurance Co., Velie v. 3 C. P. R.	202
Newberg v. Schwab, 5 C. P. R.	19
New Central Coal Co., Renwick v. 14 C. P. R.	114
Newcombe v. Eagleton, 2 Law Rec.	6
Newcomb v. Hale, 4 C. P. R.	25
Newcombe, Wheaton v. 11 C. P. R.	90
Newell Universal Mill Co. v. Muxlow, 16 C. P. R.	153
Newell Universal Mill Co., Muxlow v. 17 C. P. R.	238
Newell v. Wigham, 9 C. P. R.	361

	Page
New England Life Insurance Co. v. Keller, 7 C.	
P. R.	109
New Haven Webb Co. v. Ferris, 16 C. P. R.	265
Newhoff v. Epstein, 1 Law Rec.	109
New Home S. M. Co. v. McLaughlin, 3 Law Rec.	102
Newman v. Grieff, 3 C. P. R.	362
Newman, Infants &c., 1 Law Rec.	78
Newman v. Pennsylvania R. R. Co., 27 C. P. R.	377
Newmark, Virgil v. 2 Law Rec.	47
Newton v. Jay and Winthrop, 35 C. P. R.	89
Newton v. Newton, 8 C. P. R.	224
Newton, People ex rel. N. Y. Underground R. R.	
Co. v. 19 C. P. R.	416
Newton, Sutton v. 7 C. P. R.	333
Newton, Sutton v. 11 C. P. R.	301
N. Y. Asbestos Mfg. Co., Trueb v. 25 C. P. R. ...	347
N. Y. & Atlantic R. R. Co., Whitney v. 5 C. P. R.	118
N. Y. Book Co., London v. 20 C. P. R.	280
New York Bookbinding Co., Troy Printing and	
Bookbinding Co. v. 16 C. P. R.	120
N. Y. Board of Fire Underwriters v. Beecher, 24	
C. P. R.	307
N. Y. C. & H. R. R. Co., Bord v. 6 C. P. R.	222
N. Y. C. & H. R. R. Co., Frey v. 37 C. P. R.	191
N. Y. C. &c. R. R. Co., Greene v. 2 C. P. R.	427
N. Y. C. & H. R. R. R. Co., Kenny v. 15 C. P. R. ...	347
N. Y. Central & Hudson River R. R. Co., Kelly v.	
23 C. P. R.	67
N. Y. C. & H. R. R. Co., McKeon v. 2 Law Rec. ...	5
N. Y. Central & Hudson River R. R. Co., Peri v.	
26 C. P. R.	279
N. Y. Central & H. R. R. R. Co., People v. 3 C. P.	
R.	11
New York Central & Hudson R. R. R. Co., Powell	
v. 14 C. P. R.	125
N. Y. Central & Hudson River R. R. Co., Reichel	
v. 18 C. P. R.	248

	Page
N. Y. C. & H. R. R. Co. v. Shepherd, 10 C. P. R.	153
N. Y. Central & Hudson R. R. Co. v. Shepherd, 12 C. P. R.	125
N. Y. City Baptist M. Soc. v. Tab. Baptist Church, 1 Law Rec.	242
N. Y. City Dist. Water Supply Co. v. Morning Journal, 1 Law Rec.	129
New York City R. R. Co., Cannon v. 38 C. P. R.	374
New York City Railway Co., Costa v. 35 C. P. R.	135
N. Y. Commercial Co. v. Earle, 2 Law Rec.	11
N. Y. Contracting & Trucking Co. v. Hawkes, Comr., 34 C. P. R.	14
N. Y. & Cuba Mail S. S. Co., Jellice v. 3 Law Rec.	38
N. Y. Elevated R. R. Co., Conklin v. 18 C. P. R.	366
N. Y. Elevated R. R. Co., Duyckinck v. 5 C. P. R.	22
N. Y. Elevated R. R. Co., Livingstone v. 18 C. P. R.	372
New York Elevated R. R. Co., Livingston v. 19 C. P. R.	258
N. Y. Elevated R. R. Co., Livingston v. 21 C. P. R.	210
New York Elevated Railroad, Mooney v. 31 C. P. R.	40
N. Y. Elevated R. R. Co., Moore v. 18 C. P. R.	146
N. Y. Elevated R. R. Co., Routh v. 23 C. P. R.	95
New York Elevated R. R. Co., Seasongood v. 22 C. P. R.	100
N. Y. Elevated R. R. Co., Stevens v. 18 C. P. R.	350
N. Y. Elevated R. R. Co., Sullivan v. 25 C. P. R.	163
N. Y. Electric Equip. Co. v. Hoffman House, 1 Law Rec.	224
N. Y. Evening Journal Pub. Co., Cudlip v. 34 C. P. R.	175
New York and Grand Lake R. R. Co., Thomas v. 22 C. P. R.	8

	Page
New York and Harlem Railway Co., Whittaker v. 11 C. P. R.....	189
N. Y. & H. R. R. Co., Salazer v. 2 Law Rec.....	213
New York, Lackawana & W. R. R. Co., Puls v. 39 C. P. R.....	377
New York Infant Asylum v. Roosevelt, 7 C. P. R.	307
New York Juvenile Asylum, People ex rel., Bil- lotti v. 31 C. P. R.....	214
N. Y. Juvenile Asylum, People ex rel. v. 32 C. P. R.	28
New York Lake Erie & Western R. R. Co., Brown- ing v. 22 C. P. R.....	190
N. Y., L. E. & W. R. R. Co., Davis v. 15 C. P. R.	62
New York, Lake Erie & Western R. R. Co., Henry v. 19 C. P. R.....	188
N. Y., Lake Erie & Western R. R. Co., People v. 2 C. P. R.....	82
N. Y., Lake Erie & Western R. R. Co., People v. 3 C. P. R.....	11
New York, Lake Erie & Western R. R. Co., Rochester, Hornellsville & Lackawanna R. Co. v. 14 C. P. R.....	262
New York, Lake Erie & Western R. R. Co., Stev- enson v. 14 C. P. R.....	384
N. Y. Lumber & Woodworking Co. v. Schneider, 15 C. P. R.....	30
N. Y. Life Ins. Co., Buccolo v. 38 C. P. R.....	130
New York Life Ins. Co., Koeing v. 14 C. P. R...	269
N. Y. Life Ins. Co., In re, 1 Law Rec.....	213
N. Y. Life Ins. Co. v. Richardson, 2 Law Rec...	25
New York Life Ins. Co., Thomas v. 8 C. P. R...	1
N. Y. Life Ins. Co., Townsend v. 4 C. P. R.....	398
N. Y. Life Ins. & Trust Co. v. Cuthbert, Ives et al, 25 C. P. R.....	377
N. Y. Life Ins. & Trust Co. v. Cuthbert, 1 Law Rec.	126
New York Life Ins. & Trust Co., Garvey v. 14 C. P. R.	106

	Page
N. Y., New Haven & Hartford R. R. Co., Ahner v. 20 C. P. R.	318
N. Y., New Haven & Hartford R. R. Co., Bump v. 29 C. P. R.	141
N. Y., N. H. & H. R. R. Co., Cogswell v. 12 C. P. R.	222
N. Y., New Haven & Hartford R. R. Co., Delisser v. 20 C. P. R.	312
N. Y., N. H. & H. R. R., Hoes v. 33 C. P. R.	308
N. Y., N. H. & H. R. R. Co., Londrigan v 5, C. P. R.	76
N. Y., N. H. & H. R. Co., Mixsel v. 27 C. P. R. ...	56
N. Y., N. H. & Hartford R. R. Co., Sullivan v. 1 C. P. R.	285
N. Y. & N. J. Fire Proofing Co., Eleventh Ward Bank v. 31 C. P. R.	106
New York and North Shore Railway Co., Miller v. 35 C. P. R.	280
N. Y. Novelty Co., Skoog v. 4 C. P. R.	144
N. Y., O. & W. R. R. Co., Mole v. 38 C. P. R.	64
N. Y., Ontario & Western R. R. Co., Morris v. 25 C. P. R.	169
N. Y. Oxygen Co., in re, 24 C. P. R.	398
New York, Penfield v. 38 C. P. R.	187
New York & Rosedale Cement Co., Sullivan v. 14 C. P. R.	365
New York Seal Plush & Tapestry Co., Gwalter v. 22 C. P. R.	214
N. Y. Security & Trust Co. v. Saratoga Gas & Electric Light Co., 25 C. P. R.	385
New York Society for Prevention of Cruelty to Children, People ex rel. Stern v. 29 C. P. R.	191
N. Y. State of v. Troy Steel & Iron Co., 24 C. P. R.	201
N. Y. Steam P. Co., Communipaw C. Co. v. 3 Law Rec.	144
N. Y. Staats Zeitung, Hiscox v. 23 C. P. R.	87

	Page
New York, Susquehanna & Western R. R. Co., Lyon v. 14 C. P. R.	318
N. Y. Telephone Co., Punke v. 34 C. P. R.	170
New York Underground R. R. Co., People ex rel. v. Newton, 19 C. P. R.	416
N. Y., W. S. & B. R. R. Co., Heenan v. 6 C. P. R.	348
N. Y., W. S. & B. R. R. Co., In re, to acquire land of Judson, 6 C. P. R.	302
N. Y., W. S. & B. R. R. Co., Union Trust Co. v. 9 C. P. R.	113
N. Y., W. S. & B. R. R. Co., U. S. Trust Co. v. 6 C. P. R.	90
New York, W. S. & B. R. R. Co. v. Watson, 38 C. P. R.	470
Niagara Falls Paper Co. v. Sterling, 25 C. P. R.	251
Nicoll, Corbit v. 12 C. P. R.	235
Nicol v. Karrick, 29 C. P. R.	367
Nivoll v. Palmer, 24 C. P. R.	409
Nicholas v. Hammerstein, 1 Law Rec.	237
Nichols v. Cammann, 2 C. P. R.	375
Nichols, Felt v. 2 Law Rec.	194
Nichols v. Kelsey, 13 C. P. R.	154
Nichols, Longuemare v. 17 C. P. R.	107
Nichols, Longuemare v. 18 C. P. R.	93, 97 note
Nichols v. Lumpkin, 7 C. P. R.	1
Nichols v. MacLean, 7 C. P. R.	132
Nichols v. Riley, 39 C. P. R.	192
Nichthausen v. Lehman, 1 Law Rec.	54
Niebuhr v. Schrever, 10 C. P. R.	72
Ninth Nat'l Bank v. Ward, 1 Law Rec.	161
Nobel, Knox v.	311, 429
Nobis v. Pollock, 17 C. P. R.	243
Nobis v. Pollock, 18 C. P. R.	1
Noble, Bergman v. 10 C. P. R.	190
Noble, Bergman v. 12 C. P. R.	256
Noble v. Crandle, 15 C. P. R.	265
Noell, Semmes v. 18 C. P. R.	200 note
Nordlinger v. DeMier, 18 C. P. R.	47

	Page
Nolan v. Breed, 1 Law Rec.....	112
Nolan, McNamara v. 25 C. P. R.....	35
Noland v. Command, 11 C. P. R.....	295
Norris, Bates v. 13 C. P. R.....	395
Norris, Sweet v. 12 C. P. R.....	175
North, Brenen v. 25 C. P. R.....	398
Northampton National Bank v. Willie, 16 C. P. R.	326
Northridge v. Astarita, 30 C. P. R.....	291
North River Bank, Mathot v. 16 C. P. R.....	314
North River Construction Co., Phoenix Foundry & Machine Co., v. 6 C. P. R.....	106
North River Construction Co., Woerishoffer v. 6 C. P. R.	113
North River Sugar Refining Co., People v. 16 C. P. R.	1
North River Sugar Ref. Co., People v. 18 C. P. R.	406
North, Sutorius v. 20 C. P. R.....	162
Northwestern Construction Co., Coffin v. 13 C. P. R.	9
Northwestern Masonic Aid Assn., v. Simpson, 2 Law Rec.	111
Norton v. The Mayor, etc., 1 Law Rec.....	97
Norwood v. Ray, 11 C. P. R.....	273
Noxon, Robostelli v. 17 C. P. R.....	321
Nugent, Batcheldor v. 23 C. P. R.....	178
Nutting, Matter of, 33 C. P. R.....	145



Oakes v. Harway, 6 C. P. R.....	357
Oakes v. Riter, 39 C. P. R.....	245
Oakes v. The Star Company, 39 C. P. R.....	341
Oakley, Nanz v. 19 C. P. R.....	246
Oakley, Nanz v. 21 C. P. R.....	71

	Page
Oakley v. Tuthill, 7 C. P. R.	329
Obart v. Simmons Soap Co., 13 C. P. R.	227
O'Bogert, Townshend v. 20 C. P. R.	262
O'Brien, Bush v. 31 C. P. R.	324
O'Brien, Keenan v. 16 C. P. R.	71, 75, 431, 439
O'Brien v. Metropolitan Street Railway Co., 2 C. P. R.	152
O'Brien, Matter of, 32 C. P. R.	239
O'Brien, Mulligan v.	444
O'Brien, Weeks v. 27 C. P. R.	86
O'Connor v. City of New York, 37 C. P. R.	372
O'Connor, Connelly v. 18 C. P. R.	8
O'Connor, Maher v. 1 C. P. R.	158
O'Connor v. Mechanics Bank, 22 C. P. R.	393
O'Donnell v. McIntire, 9 C. P. R.	370
O'Dougherty, Remington Paper Co. v. 6 C. P. R.	79
O'Gorman, Ackerman v. 17 C. P. R.	275
O'Gorman, Dooley v. 27 C. P. R.	345
O'Hara v. Ehrich, 19 C. P. R.	72
O'Loughlin v. Geo. H. Hammond & Co., 12 C. P. R.	171
O'Neil v. Campbell, 39 C. P. R.	121
O'Neil, Cavanagh v. 2 Law Rec.	86
O'Neill, Hecla Consolidated Gold Mining Co. v. 23 C. P. R.	143
O'Reilly, Crane v. 13 C. P. R.	71
O'Reilly, Hayes v. 8 C. P. R.	347
O'Rourke, Doelger v. 12 C. P. R.	254
O'Rourke v. Henry Prouse Cooper Co., 11 C. P. R.	321
O'Shea v. McLearn, 15 C. P. R.	69
O'Sullivan, In re, 1 Law Rec.	240
O'Sullivan Manhattan R. R. Co. v. 25 C. P. R.	233
O'Sullivan v. N. Y. Elevated R. R. Co., 25 C. P. R.	163
Ocean Steam Navigation Co., Cavanagh v. 19 C. P. R.	315, 391

	Page
Ocean Steam Navigation Co., Robinson v. 15 C.	
P. R.	88
Ocean Steamship Navigation Co., Robinson v. 16	
C. P. R.	255
Ockerhausen, Coogan v. 11 C. P. R.	315
Odel v. Clyde, 3 Law Rec.	180
Odell, Outhouse v. 24 C. P. R.	289
Oelberman v. Rosenbaum, 15 C. P. R.	389
Oesteriches v. Jones, 13 C. P. R.	98
Ogilvie, Donner v. 12 C. P. R.	399
Ohlsen v. Equitable Life Assurance Society, 28	
C. P. R.	226
Oishei v. Craven, 24 C. P. R.	301
Oishei v. Metropolitan Street Railway Co., 35 C.	
P. R.	240
Oishei v. Pennsylvania R. Co., 38 C. P. R.	160
Olcott, in re, 1 Law Rec.	189
Olds, Curlette v. 35 C. P. R.	306
Oldstead v. Reed, 7 C. P. R.	190
Olin, Adams v. 21 C. P. R.	227
Olifiers v. Belmont, 24 C. P. R.	408
Oliver, Andrews v. 2 C. P. R.	457
Oliver, Will of, 25 C. P. R.	25
Oliwell v. Verdenhalven, 17 C. P. R.	362
Olney, Receiver v. Bird, 1 Law Rec.	228
Olyphant, Equitable Life Assurance Soc. v. 19 C.	
P. R.	21
Onderdonk, Barnard v. 2 C. P. R.	294
Oneida Community (limited), Burt v. 20 C. P. R.	167
Oneida Co., People ex rel. Scholls v. 24 C. P. R. . .	152
Oneonta, C. & R. S. Railroad Co., Knickerbocker	
Trust Co. v. 37 C. P. R.	359
Oppenheimer v. Hoyt, 1 Law Rec.	253
Opera Glass Supply Co., Bliss Co. v. 21 C. P. R.	136
Order of Am. Fraternal Circle of Baltimore City	
Adler v. 22 C. P. R.	336
Order Germania, Devender v. 6 C. P. R.	161
Order der Hermans Sohne v. Freifield, 2 Law Rec.	108

	Page
Orser, Estate of, 4 C. P. R.	139
Orth, Pinney v. 2 C. P. R.	1
Orr v. Currie, 25 C. P. R.	16
Orr, Pach v. 15 C. P. R.	176
Orvis v. Goldschmidt, 2 C. P. R.	314
Osborne, Biershenk v. 3 Law Rec.	122
Osborn, People ex rel. v. Gillon, 18 C. P. R.	112
Osborne v. Haywood, 29 C. P. R.	215
Osborne, People ex rel. Hoyle v. 6 C. P. R.	299
Osborn, Poole v. 8 C. P. R.	232
Osborne v. Randall, 7 C. P. R.	323
Oshinsky, Barnberger v. 26 C. P. R.	346
Otis Brothers & Co., Lipp v. 30 C. P. R.	270
Ottman v. Daly, 17 C. P. R.	62
Ottman v. Griffin, 17 C. P. R.	185
Ottman v. Schenectady Co-op. Realty Co., 39 C. P. R.	308
Outhouse v. Odell, 24 C. P. R.	289
Overheiser v. Morehouse, 8 C. P. R.	11
Owens, Estate of, 24 C. P. R.	256
Owens v. R. Hudnut's Pharmacy, 20 C. P. R. ..	145

P

Pach v. Gilbert, 17 C. P. R.	399
Pach v. Gilbert, 18 C. P. R.	262
Pach v. Gilbert, 20 C. P. R.	300
Pach v. Orr, 15 C. P. R.	176
Packard Co., McCarthy v. 30 C. P. R.	321
Pacific Natl. Bank, Market Natl. Bank v. 2 C. P. R.	330
Pacific Nat. Bank, Market Nat. Bank v. 10 C. P. R.	19
Paddock v. Kirkham, 11 C. P. R.	50
Pagan, Riley v. 28 C. P. R.	90

	Page
Page, Hankinson v. 12 C. P. R.	279
Page, Stephens, as Receiver etc. of the McCall Pub. Co. v. 23 C. P. R.	191
Paget v. Pease, 17 C. P. R.	234
Paillard Non-Magnetic Watch Co., McCulloh v. 20 C. P. R.	386
Pain, Koster v. 29 C. P. R.	361
Paine, Blatchford v. 3 Law Rec.	37
Paine v. Hinsdale, 3 Law Rec.	20
Paine Lumber Co. v. Galbraith, 29 C. P. R.	99
Paine, Rothwell v. 9 C. P. R.	128
Paine, Weed v. 4 C. P. R.	305
Palen, Reynolds v. 13 C. P. R.	200
Palen v. Bushnell, 18 C. P. R.	56
Pallman v. Livingston, 26 C. P. R.	302
Palmer, Barnes v. 26 C. P. R.	382
Palser, Matteson v. 31 C. P. R.	198
Palmer, McCaulay v. 9 C. P. R.	390
Palmer, Morton v. 21 C. P. R.	95
Palmer, Nicoll v. 24 C. P. R.	409
Palmer, Vernon v. 5 C. P. R.	233
Palmyra, Village of, v. Wynkoop, 17 C. P. R.	187
Pannace, Fursman v. 15 C. P. R.	340
Paraiso Reduction Co., Jelly v. 15 C. P. R.	86
Pardee Medicine Co., Goddard v. 16 C. P. R. ...	379
Pardie v. Conde, 29 C. P. R.	48
Parent, Capital City Bank v. 20 C. P. R.	38
Park v. Park, 3 Law Rec.	204
Park, Lyon v. 16 C. P. R.	109
Park Sons Co. v. Iron Malt Chemical Co., 2 Law Rec.	44
Parke, in re, 25 C. P. R.	196
Parke, in re, 1 Law Rec.	13
Parker, Beebe v. 16 C. P. R.	320
Parker, Bell Telephone Co. v. 38 C. P. R.	122
Parker v. Day, 27 C. P. R.	211
Parker, Gebhard v. 18 C. P. R.	244
Parker, Lawrenceville Cement Co. v. 21 C. P. R.	263

	Page
Parker v. Marco, 21 C. P. R.	371
Parker, People ex rel. Cook v. 1 C. P. R.	444
Parker, Sniffen v. 8 C. P. R.	393
Parkhurst v. Berdell, 15 C. P. R.	354
Parnell, Ash v. 19 C. P. R.	234
Parrish v. Sun Publishing Co., 2 Law Rec.	130
Parry v. American Opera Co., 12 C. P. R.	194
Parry v. Erie Transfer Co., 22 C. P. R.	178
Parsons v. Sprague, 3 C. P. R.	290
Parsons, Sprague v. 6 C. P. R.	26
Parsons, Sprague v. 11 C. P. R.	17
Partridge v. Rivers, 1 Law Rec.	7
Partz, Ackerly & Gerard Co. v. 20 C. P. R.	382
Passavant v. Sickel, 14 C. P. R.	57
Patter, Produce Co., Seiser Bro. Co. v. 23 C. P. R.	348
Patterson v. Buchanan, 29 C. P. R.	238
Patterson v. Burnett, 17 C. P. R.	115
Patterson, Central Park Baptist Church v. 24 C. P. R.	79
Patterson, Gould v. 22 C. P. R.	230
Patterson v. Knapp, 24 C. P. R.	251
Patterson v. McCunn, 9 C. P. R.	122
Paterson v. Mutual Life Assn., 19 C. P. R.	262
Patterson v. Patterson, 3 Law Rec.	67
Patterson v. N. Y. Recorder Co., 1 Law Rec.	222
Patterson v. Woodbury Dermatological Inst. 38 C. P. R.	433
Pati, Lassall v. 28 C. P. R.	328
Pattison v. Delaney, 20 C. P. R.	427
Paton, Stewart v. 23 C. P. R.	286
Patton, In re, William L., 23 C. P. R.	331
Paul v. Ford, 38 C. P. R.	71
Paul Jones & Co., In re 39 C. P. R.	265
Pauli v. Smith, 3 Law Rec.	106
Paulus, Bender v. 35 C. P. R.	124
Pause, Matter v. 22 C. P. R.	41
Peace v. Wilson, 37 C. P. R.	287

	Page
Peace v. Wilson, 38 C. P. R.....	386
Peabody v. Long Acre Square Building Co., 39 C. P. R.....	5
Peabody v. Satterlee, 2 Law Rec.....	209
Pease, Paget v. 17 C. P. R.....	234
Peck v. Baldwin, 19 C. P. R.....	403
Peck v. Dickey, 23 C. P. R.....	210
Peck v. Hayes, 14 C. P. R.....	110
Peck, Hobart v. 14 C. P. R.....	433
Peck, In re, 21 C. P. R.....	85
Peck, Sniffen v. 6 C. P. R.....	188
Pecke v. Hydraulic Construction Co., 26 C. P. R.	337
Peet v. Hatcher, 13 C. P. R.....	450
Peet, McDonald v. 7 C. P. R.....	200
Peetsch v. Quinn, 24 C. P. R.....	394
Peetsch v. Quinn, 1 Law Rec.....	200, 202
Pell, Godfrey v. 4 C. P. R.....	448
Pelton, Estate of, 19 C. P. R.....	149
Pelham Park R. R. Co., Kaliski v. 20 C. P. R...	315
Pemberton v. Mech. & Traders Bank, 1 Law Rec.	188
Pendergast v. Dempsey, 18 C. P. R.....	198
Pendergast v. Greenfield, 10 C. P. R.....	231
Pendleton v. Johnson, 21 C. P. R.....	272
Penfield v. New York, 38 C. P. R.....	187
Penfield, Rice v. 15 C. P. R.....	268
Pennefelher v. Wilson, 2 Law Rec.....	61
Pennell, Kneeland v. 38 C. P. R.....	489
Pennel, Wills v. 38 C. P. R.....	27
Penniman v. Fuller & Warren Co., 22 C. P. R..	205
Pennsylvania Glass Co., In re, 29 C. P. R.....	383
Pennsylvania R. R. Co., Newman v. 27 C. P. R..	377
Pennsylvania R. Co., Oishei v. 38 C. P. R.....	160
People v. Alden, 13 C. P. R.....	317
People ex rel. Bachellor v. Bacon, 29 C. P. R...	111
People v. Armour, 27 C. P. R.....	25
Peoples Bank v. Thompson, 24 C. P. R.....	62
People v. Brady, 19 C. P. R.....	372

	Page
People v. Board of Canvassers of Greene County, 2 C. P. R.....	452
People v. Carter, 14 C. P. R.....	241
People v. Cowan, 24 C. P. R.....	146
People v. Dooley, 33 C. P. R.....	77
People v. Equitable Life Ins. Soc., 37 C. P. R....	322
People v. Excelsior Gas Light Co., 8 C. P. R....	390
People v. Kurinsky, 3 Law Rec.....	95
People v. Lasher, 19 C. P. R.....	372
People v. Levy, 25 C. P. R.....	390
People v. John D. Locke Co., Limited, 12 C. P. R.	31
People v. Loew et al. 26 C. P. R.....	132
People v. Lyon, 39 C. P. R.....	351
People v. Masonic Guild & Mutual Benefit Asso- ciation, 22 C. P. R.....	74, 79
People v. McClellen, 39 C. P. R.....	178
People v. Mitchell, 21 C. P. R.....	111
People v. Murray Hill Bank, 26 C. P. R.....	1
People v. N. Y. Central & Hudson River R. R. Co., 3 C. P. R.....	11
People v. N. Y., Lake Erie & Western Railroad Co., 2 C. P. R.....	82
People v. N. Y., Lake Erie & Western R. R. Co., 3 C. P. R.....	11
People v. North River Sugar Refining Co., 16 C. P. R.	1
People v. North River Ref. Co., 18 C. P. R....	406
People v. Pratt, 22 C. P. R.....	294
People v. Rochester Dime & Loan Association, 26 C. P. R.....	75
People of State of New York v. Wolf, 35 C. P. R.	212
People v. Seneca Lake Grape and Wine Co., 17 C. P. R.....	130
People v. St. Nicholas Bank, 30 C. P. R.....	30
People v. Troy Chemical Co., 39 C. P. R.....	100
People v. Tunncliffe, 17 C. P. R.....	381
People v. U. S. Law Blank Co., 27 C. P. R.....	351
People ex rel. Aldinger v. Pugh, 19 C. P. R....	91

	Page
People ex rel. Allen v. Murray, 23 C. P. R.....	71
People ex rel. Ballin v. Smith, 35 C. P. R.....	325
People ex rel. Baldwin v. Goldfoyle, 23 C. P. R..	417
People ex rel. Bean v. Clausen, 33 C. P. R.....	141
People ex rel. Billotti v. N. Y. Juvenile Asylum, 31 C. P. R.	214
People ex rel. Borst v. Grant, 10 C. P. R.....	173
People ex rel. Byrne v. French, 3 C. P. R.....	180
People ex rel. Chatillon v. Grant, 10 C. P. R...	171
People ex rel. Cattle v. Tucker, 16 C. P. R.....	126
People ex rel. Cavanagh v. McAdam, 2 C. P. R..	396
People ex rel. Choate v. Barrett, 18 C. P. R....	230
People ex rel. Clark v. Fitzgerald, 34 C. P. R...	56
People ex rel. Clark v. Grant, 13 C. P. R.....	183
People ex rel. Clark v. Grant, 14 C. P. R.....	28
People ex rel. Cohen v. Grant, 11 C. P. R.....	55
People ex rel. Com. Tel. & Elec. S. Co. v. Barker, 1 Law Rec.	92
People ex rel. Connor v. Purroy, 22 C. P. R.....	116
People ex rel. Cook v. Parker, 1 C. P. R.....	444
People ex rel. Crane v. Grant, 13 C. P. R.....	209
People ex rel. Coveney v. Kearney, 30 C. P. R..	11
People ex rel. Egan v. Columbia Club, 20 C. P. R.	319
People ex rel. Erlich v. Grant, 32 C. P. R.....	73
People ex rel. Fireman's Ins. Co. v. Justices of City Court of New York, 19 C. P. R.....	418
People ex rel. Fitzsimmons v. Jordan, 1 C. P. R.	528
People ex rel. Flynn, Sheriff, v. Leech, County Clerk, 34 C. P. R.....	20
People ex rel. Gould v. Board of Com., 1 C. P. R.	244
People ex rel. Griffin v. Ryder, 22 C. P. R.....	388
People ex rel. Henry Prouse Cooper Co. v. Kelly, 12 C. P. R.....	414
People ex rel. Herkimer & Mohawk R. R. Co. v. Assessors of the Town of Herkimer, 6 C. P. R.	297
People ex rel. Higgins v. Grant, 19 C. P. R.....	318
People ex rel. Hoyle v. Osborne, 6 C. P. R.....	299

	Page
People ex rel. Jerome v. Court of General Sessions, 37 C. P. R.....	219
People ex rel. v. N. Y. Juvenile Asylum, 32 C. P. R.	28
People ex rel. Keirnan v. Grant, 10 C. P. R.....	172
People ex rel. Krohn v. Miller, 9 C. P. R.....	149
People ex rel. Lower v. Donovan, 23 C. P. R....	1
People ex rel. Lust v. Grant, 10 C. P. R.....	158
People ex rel. MacDonald v. Grant, 10 C. P. R.	171
People ex rel. McDonald v. Leubischer, 27 C. P. R.	297
People ex rel. McLane v. Whitney, 27 C. P. R..	150
People ex rel. Martin v. Walters, 7 C. P. R.....	406
People ex rel. Miller v. Davidson, 3 C. P. R.....	389
People ex rel. Miller v. Ryder, 20 C. P. R.....	172
People ex rel. Monett v. Grant, 10 C. P. R.....	171
People ex rel. Mooney v. Walsh, 15 C. P. R.....	19
People ex rel. Mullin v. Brotherhood of Stationery Engineers, 19 C. P. R.....	175
People ex rel. Negus v. Dwyer, 1 C. P. R.....	484
People ex rel. N. Y. C. & H. R. R. Co. v. State Board of Tax Commissioners, 32 C. P. R...	341
People ex rel. New York Underground R. R. Co. v. Newton, 19 C. P. R.....	416
People ex rel. Osborne v. Gillen, 18 C. P. R....	112
People ex rel. Patrick v. Fitzgerald, 33 C. P. R..	128
People ex rel. Perkins v. Moss, 39 C. P. R.....	207
People ex rel. Phelps v. Sutton, 1 Law Rec.....	157
People ex rel. Philips & Miller, resp. v. Wurster Comr., ect., 25 C. P. R.....	267
People ex rel. Pickard v. Sheriff of Chautauqua Co., 11 C. P. R.....	172
People ex rel. Pond v. Tamsen, 25 C. P. R.....	141
People ex rel. Post v. Grant, 13 C. P. R.....	305
People ex rel. Preminger v. Board of Excise, 1 Law Rec.	120
People ex rel. Rochester Telephone Co. v. Priest, 35 C P. R.....	13

	Page
People ex rel. Reynolds Card Mfg. Co. v. Fourth District Court, 13 C. P. R.....	134
People ex rel. Rodding v. Grant, 10 C. P. R.....	174
People ex rel. Ruheiser v. Sundler, 1 Law Rec...	162
People ex rel. Scholls v. Supervisors of Oneida Co., 24 C. P. R.....	152
People ex rel. Solomon v. Grant, 10 C. P. R.....	158
People ex rel. Stern v. New York Society for Prevention of Cruelty to Children, 29 C. P. R.	191
People ex rel. Tallman v. Tamsen, 1 Law Rec...	137
People ex rel. Union Insurance Co. v. Nash, 13 C. P. R.	301
People ex rel. Union Insurance Co. v. Nash, 16 C. P. R.	1
People ex rel. Updyke v. Gillen, 18 C. P. R.....	109
People ex rel. Village of Fulton v. Supervisors of Oswego, 15 C. P. R.....	379
People ex rel. Wallace v. Abbott, 13 C. P. R. 101,	163
People ex rel. Washington Building Co. v. Feitner, 31 C. P. R.....	22
People ex rel. Weick v. Warden of City Prison, 38 C. P. R.....	97
People ex rel. West Shore Traction Co. v. Bauer, 39 C. P. R.....	258
People ex rel. Whitehouse v. Mellie & Co., 1 Law Rec.	68
People ex rel. Winans v. Adams, 20 C. P. R.....	195
People ex rel. Winans v. Adams, 21 C. P. R.....	159
People ex rel. Wright v. Willard, 15 C. P. R.....	400
Percell, Carling v. 23 C. P. R.....	140
Perkins v. Kendall, 3 C. P. R.....	240
Perkins v. Montgomery, 2 Law Rec.....	119
Perkins v. Stimmil, 17 C. P. R.....	25
Peri v. N. Y. Central & Hudson River R. R. Co., 26 C. P. R.....	279
Perine v. Wiggins, 18 C. P. R.....	172
Perrow v. Lindsley, 16 C. P. R.....	359

	Page
Perry, Baldwin v. 1 C. P. R.	32, 118
Perry, Lambert v. 14 C. P. R.	274
Person, Ruddy v. 6 C. P. R.	25
Perzel v. Shook, 5 C. P. R.	397
Peetsch v. Sommers, 28 C. P. R.	124
Peters v. Foster, 18 C. P. R.	380
Peterman, Van Cise v. 35 C. P. R.	81
Peterson, Dammann v. 26 C. P. R.	63
Pethcal, Hadley v. 23 C. P. R.	216
Petrakion v. Arbelly, 23 C. P. R.	183
Petten v. United Life & Accident Life Insurance Co., 22 C. P. R.	247
Pettett v. Seligman, 39 C. P. R.	378
Pfeiffer v. Pfeiffer, 1 Law Rec.	7
Pfisterer, Dowd v. 2 Law Rec.	44
Pfister, Smith v. 8 C. P. R.	409
Phalen, In re, 16 C. P. R.	292
Phalon v. Rochester Railway Co., 28 C. P. R.	42
Phelps, Coleman v. 1 C. P. R.	9
Phelps, In re, 16 C. P. R.	424
Phelps v. Phelps, 6 C. P. R.	117
Philipe v. Levy, 15 C. P. R.	68
Phillips, Armstrong v. 20 C. P. R.	399
Phillips, Bayer v. 10 C. P. R.	227
Phillips, Burke v. 26 C. P. R.	374
Philips & Miller, resp., People ex rel. v. Wurster Coms., ect., 25 C. P. R.	367
Philo, Connor v. 38 C. P. R.	363
Phoenix Bridge Co., Case v. 19 C. P. R.	373
Phoenix Foundry & Machine Co. v. North River Construction Co., 6 C. P. R.	106
Phoenix Ins. Co., Bank of Mobile v. 8 C. P. R.	213
Phoenix Insurance Co., Reck v. 3 C. P. R.	376
Phenix Ins. Co., Rosenwald v. 9 C. P. R.	449
Phoenix Nat'l Bank v. Kienmas Assn., 2 Law Rec.	74
Phyfe, Watson v. 11 C. P. R.	442
Phyfe, Watson v. 12 C. P. R.	172

	Page
Pickert, Billings v. 9 C. P. R.	193
Pickering, Vrooman v. 28 C. P. R.	302
Pickhard, People ex rel. v. Sheriff of Chautau-	
qua Co., 11 C. P. R.	172
Piek, Bannigan v. 8 C. P. R.	246
Pierce, Hinman v. 16 C. P. R.	138
Pierce, Marsh v. 15 C. P. R.	49
Pierson v. Clark, 38 C. P. R.	226
Pierson, Durant v. 19 C. P. R.	203
Pierson v. Lydecker, 1 Law Rec.	177
Pierson v. Morgan, 17 C. P. R.	124
Pike, Dorsey v. 13 C. P. R.	147
Pike, Roberts v. 19 C. P. R.	422
Pilkington v. Brooklyn Heights Railroad, 30 C.	
P. R.	276
Pimstein, Bates v. 7 C. P. R.	300
Pinckney, Taylor v. 12 C. P. R.	107
Pincus, Christenson v. 38 C. P. R.	371
Pinkham, Moshane v. 22 C. P. R.	173
Pinney, Boyd v. 26 C. P. R.	29
Pinney v. Orth, 2 C. P. R.	1
Pipegras v. Edmunds, 23 C. P. R.	241
Piqua Club Association, Mitchell v. 25 C. P. R. ..	139
Pitkins v. Wilcox, 20 C. P. R.	27
Pittsfield National Bank v. Tailer, 23 C. P. R. ..	48
Place, Estate of Susan A., 9 C. P. R.	435
Place v. Hayward, 8 C. P. R.	352
Place v. Riley, 4 C. P. R.	393
Place v. Riley, 7 C. P. R.	403
Plass v. Tucker, 1 Law Rec.	249
Platt, Barker v. 15 C. P. R.	52
Platt Mfg. Co. v. Jordan Iron, etc., Co., 5 C. P. R.	372
Platt & Washburn Refining Co. v. Hepworth, 13	
C. P. R.	122
Platt, Welch v. 5 C. P. R.	433
Platt v. Withington, 19 C. P. R.	387
Plimpton v. Bigelow, 3 C. P. R.	182
Plimpton v. Bigelow, 4 C. P. R.	189

	Page
Plumb, In re, 22 C. P. R.....	209
Plumber, Ferris v. 13 C. P. R.....	389
Plonsky, Bates v. 2 C. P. R.....	389
Poey, Erickson v. 5 C. P. R.....	379
Poole, In re, 5 C. P. R.....	297
Polley v. Wilkisson, 5 C. P. R.....	133
Pollock, Nobis v. 17 C. P. R.....	243
Pollock, Nobis v. 18 C. P. R.....	1
Poole v. Belcha, 22 C. P. R.....	67
Poole v. Osborn, 8 C. P. R.....	232
Pooley, McRoberts v. 12 C. P. R.....	139
Pooler, Estate of, 1 Law Rec.....	19
Pooler v. N. Y. El. R. R., 1 Law Rec.....	123, 259
Pond, People ex rel. v. Tamsen, 25 C. P. R.....	141
Popham, Kent v. 6 C. P. R.....	336
Pope v. McMann, 2 Law Rec.....	111
Pope v. Negus, 14 C. P. R.....	406
Pope, Shearman v. 12 C. P. R.....	329
Popper, Levy v. 35 C. P. R.....	1
Porter, Anderson v. 23 C. P. R.....	297
Porter, Matter of, 28 C. P. R.....	405
Porter v. Sewell Car Heating Co., 17 C. P. R....	386
Porter v. Smith, 7 C. P. R.....	195
Possenecker, Weltman v. 26 C. P. R.....	238
Posson v. Dean, 8 C. P. R.....	177
Post, McKeaggan v. 38 C. P. R.....	69
Post v. Moren, 1 C. P. R.....	222
Post, People ex rel. v. Grant, 13 C. P. R.....	305
Postal Telegraph Cable Co., Jepson v. 22 C. P. R.	434
Potts v. Davidson, 7 C. P. R.....	97
Potts v. Dounce, 33 C. P. R.....	303
Potter v. Potter, 8 C. P. R.....	150
Potter, Ryan v. 4 C. P. R.....	80
Powell, Blauvelt v.....	186
Powell v. New York Central & Hudson R. R. R. Co., 14 C. P. R.....	125
Powell v. Powell, 3 Law Rec.....	191

	Page
Power, Badger v. 2 Law Rec.....	132
Powers, Brown v. 31 C. P. R.....	126
Powers, Chandler v. 1 C. P. R.....	355
Powers v. Gourand, 2 Law Rec.....	19
Powers, In re, 6 C. P. R.....	326
Powers v. Manhattan Railway Co., 20 C. P. R..	78
Powers v. Saven, 22 C. P. R.....	253
Prall v. Hall, 3 Law Rec.....	152
Pratt v. Mosetter, 9 C. P. R.....	351
Pratt, People v. 22 C. P. R.....	294
Pratt, Stone v. 25 C. P. R.....	176
Pratt v. Underwood, 4 C. P. R.....	167
Prentiss v. Bowden, 24 C. P. R.....	295
Prentiss v. Bowden, 25 C. P. R.....	145
Prentice, Gilman v. 11 C. P. R.....	310
Prentiss, Gilman v. 22 C. P. R.....	143
Presbyterian Church v. Steiner, 31 C. P. R.....	121
President, etc., of Delaware & Hudson Canal Co., Genet v. 12 C. P. R.....	448
President of Delaware & Hudson Canal Co., Genet v. 17 C. P. R.....	55
President and Directors of the Manhattan Co. v. Dunn, 15 C. P. R.....	166
Press Publishing Co. v. Associated Press, 29 C. P. R.	203
Press Publishing Co., Dudley v. 17 C. P. R.....	267
Press Publishing Co., Morse v. 32 C. P. R.....	152
Press Publishing Co., Morse v. 33 C. P. R.....	59
Press Publishing Co., Roberts v. 18 C. P. R.....	251
Press Publishing Co., Strakosch v. 17 C. P. R..	209
Preston, Wells v. 37 C. P. R.....	165
Preston's Will, In re, 37 C. P. R.....	165
Price v. Price, 11 C. P. R.....	359
Price v. The Ohio Falls Car Co., 1 Law Rec....	119
Prickhardt v. Robertson, 4 C. P. R.....	112
Priest, Rochester Telephone v. 3 C. P. R.....	13
Priestley v. Am. U. Life Ins. Co., 1 Law Rec....	125
Pringle v. Burroughs, 37 C. P. R.....	223

	Page
Pringle v. Leverich, 1 C. P. R.....	373
Pringle v. L. I. R. R. Co., 3 Law Rec.....	210
Prior v. Hall, 13 C. P. R.....	83
Prior v. Prior, 15 C. P. R.....	436
Proctor v. Sidney Sash, Blind & Furniture Co., 26 C. P. R.....	84
Prout, Estate of James D., 19 C. P. R.....	435
Prout, In re, 18 C. P. R.....	270
Providence & Stonington Steamship Co., Hunt v. 9 C. P. R.....	291
Provident Savings Life Assurance Soc. v. Har- ney, 29 C. P. R.....	315
Proweeder v. Lewis, 24 C. P. R.....	299
Pruden v. Tallman, 6 C. P. R.....	360
Prudential, Leary v. 3 Law Rec.....	53
Prudential Ins. Co., Steinback v. 33 C. P. R....	218
Publishers Printing Co. v. Gillen Printing Co., 25 C. P. R.....	327
Pulls v. N. Y., Lackawana & W. R. R. Co., 39 C. P. R.	377
Pugh, Aldinger v. 19 C. P. R.....	91
Pugh, People ex rel. Aldinger v. 19 C. P. R.....	91
Pugh & Co., Sagehomme v. 38 C. P. R.....	422
Pultz, Fritz v. 2 C. P. R.....	142
Purdy, Matter of, 28 C. P. R.....	354
Purdy v. Webster, 9 C. P. R.....	144
Purroy, People ex rel. Connor v. 22 C. P. R....	116
Putnam C. Chemical Works v. Jochen, 8 C. P. R.	424
Putnam v. Stewart, 2 C. P. R.....	172
Putnam v. Van Allen, 13 C. P. R.....	246
Pyrolusite Manganese Co., In re, 3 C. P. R.....	270

Q

Quackenbush, Bannerman v. 7 C. P. R.....	328
Quackenbush, Bannerman v. 9 C. P. R.....	108
Quann, Fitzgerald v. 1 C. P. R.....	273

	Page
Quann, Fitzgerald v. 15 C. P. R.....	139
Queen v. Weaver, 32 C. P. R.....	60
Quick v. Leigh, 20 C. P. R.....	147
Quin v. Waiter, 18 C. P. R.....	122
Quincy, Miller v. 34 C. P. R.....	118
Quinn, Estate of, 25 C. P. R.....	240
Quinn, Matter of, 25 C. P. R.....	226
Quinn, Peetsch v. 24 C. P. R.....	394
Quintana v. Sohmer, 1 Law Rec.....	44
Quirk, Gescheidt v. 5 C. P. R.....	38

R

Race v. Gilbert, 10 C. P. R.....	1
Raellan v. Stillwell, 28 C. P. R.....	243
Raff, Joseph v. 33 C. P. R.....	173
Ragsdale v. Green, 28 C. P. R.....	229
Ragsdale v. Green, 29 C. P. R.....	50
Railway Co., Healy v. 1 C. P. R.....	15
Rall v. Buckhout, 2 C. P. R.....	442
Ramsden v. Ramsden, 2 C. P. R.....	416
Ramsey v. Barnes, 20 C. P. R.....	85
Randall, Matter of, 26 C. P. R.....	250
Randall, Osborne v. 7 C. P. R.....	323
Randall v. Randall, 17 C. P. R.....	76
Randell, Biel v. 26 C. P. R.....	307
Randell v. Vanwagenen, 17 C. P. R.....	403
Ranger, Faller v. 34 C. P. R.....	23
Ranger, First National Bank of Plainfield v. 14 C. P. R.....	1
Rank v. Levenus, 5 C. P. R.....	368
Rankin, Cheney v. 29 C. P. R.....	285
Rankine v. Metzger, 32 C. P. R.....	370
Ransom v. Cutting, 38 C. P. R.....	396
Rapp, Kipp v. 7 C. P. R.....	316, 385

	Page
Rasch, Estate of, 28 C. P. R.....	98
Rasback, Woodford v. 6 C. P. R.....	315
Rasquin, Meyer v. 38 C. P. R.....	473
Rathburn v. Weber, In re, 13 C. P. R.....	50
Ratz v. Ratz, 2 Law Rec.....	129
Rauch, Globe v. 26 C. P. R.....	359
Rauchberger v. Interurban St. Ry. Co., 38 C. P. R.	297
Raven, Smith v. 2 Law Rec.....	14
Ray, Coatesworth v. 28 C. P. R.....	6
Ray, Horwood v. 11 C. P. R.....	273
Raydure, Wood v. 9 C. P. R.....	96
Raymond v. Campbell Mfg. Co., Schreiber v. 26 C. P. R.....	290
Raynor, Johnson v. 27 C. P. R.....	102
Read, Hoffman Mfg. Co. v. 8 C. P. R.....	277
Read v. Simon, 22 C. P. R.....	196
Realty Transfer Co., Cohn-Bayer-Myers & Aron- son Co. v. 38 C. P. R.....	145
Reavy v. Clark, 18 C. P. R.....	272
Reck v. Phoenix Ins. Co., 3 C. P. R.....	376
Rector, Martin v. 2 C. P. R.....	134
Reed v. Batten, 17 C. P. R.....	272
Reed, Olmstead v. 7 C. P. R.....	190
Reed v. Reed, 13 C. P. R.....	109
Reed, Scott v. 8 C. P. R.....	269
Reedy Elevator Co. v. American Grocery Co., 2 Law Rec.	209
Reese, Bick v. 17 C. P. R.....	110
Reese, Kellogg v. 14 C. P. R.....	383
Reese v. Reese, 30 C. P. R.....	55
Reeves v. Hyde, 13 C. P. R.....	323
Reformed Low Church of Harlem, Jorgensen v. Minister, Elders and Deacons of, 23 C. P. R.	232
Regan, Matter of, 31 C. P. R.....	387
Regan, Matter of, 32 C. P. R.....	98
Regan v. Traube, 18 C. P. R.....	332

	Page
Reich, Cochran v. 25 C. P. R.....	147
Reichel, N. Y. Central & Hudson River R. R. Co., v. 18 C. P. R.....	248
Reichert Crouse v. 21 C. P. R.....	39
Reid v. Gaedeke, 3 Law Rec.....	213
Reid v. Gaedeke, 29 C. P. R.....	212
Reid, Smith v. 19 C. P. R.....	363
Reid, United States v. 4 C. P. R.....	1
Reidy, Estate of, 1 Law Rec.....	142
Reigelmann, Estate of, 2 C. P. R.....	98
Reiley, Blanchard v. 11 C. P. R.....	278
Reiley v. Byrne, 1 C. P. R.....	201
Reilly, Deering v. 32 C. P. R.....	49
Reiley, Dunham v. 15 C. P. R.....	227
Reilley v. Kerr, 3 Law Rec.....	52
Reiley, Lawson v. 13 C. P. R.....	290
Reilley v. Sabater, 26 C. P. R.....	34
Reiley v. Sicillian Asphalt Paving Co., 28 C. P. R.	59
Reilly v. Sisson, 4 C. P. R.....	361
Reiners, Andrews v. 37 C. P. R.....	51
Reinitz v. First Nat'l Bank of Chicago, 16 C. P. R.	307
Reis v. Rhode, 6 C. P. R.....	406
Reming, Kiernan v. 7 C. P. R.....	311
Remington Manufacturing Co., Sullivan v. 2 C. P. R.	68
Remington Paper Co. v. O'Dougherty, 6 C. P. R.	76
Remsen v. Hoyt, 1 Law Rec.....	46
Remsen, Estate of, 1 Law Rec.....	173
Remsen & Manice, Swanscoat v. 26 C. P. R.....	94
Remsen, Thompson v. 29 C. P. R.....	102
Rensselaer & Saratoga R. R. Co., Barkley v. 2 C. P. R.....	409
Renwick v. New Central Coal Co., 14 C. P. R....	114
Rentz, Smith v. 22 C. P. R.....	27
Republic of Honduras v. Soto, 14 C. P. R.....	9
Republic of Honduras v. Soto, 16 C. P. R.....	270

	Page
Reynolds Card Mfg. Co. People ex rel. v. Fourth District Court, 13 C. P. R.	134
Reynolds, Cashman v. 18 C. P. R.	317
Reynolds v. Cashman, 19 C. P. R.	161
Reynolds v. Chatfield, 18 C. P. R.	378
Reynolds v. Palen, 13 C. P. R.	200
Reynolds v. Swick, 7 C. P. R.	141
Rheinstrom v. Weir, 1 Law Rec.	48
Rheinhart, Oudahy v. 21 C. P. R.	52
Rhode, Reis v. 6 C. P. R.	406
Rhoads, Alker v. 33 C. P. R.	162
R. Hudnuts' Pharmacy, Owens v. 20 C. P. R.	145
Ricci, Miller v. 30 C. P. R.	155
Rice, Baldwin v. 35 C. P. R.	122
Rice v. Brewster & Co., 1 Law Rec.	5
Rice, Burnhardt v. 21 C. P. R.	331
Rice, Kendall Co. v. Cauldwell, 1 Law Rec.	34
Rice v. Penfield, 15 C. P. R.	268
Rice, Risley v. 11 C. P. R.	367
Rice v. Rockefeller, 14 C. P. R.	303
Rich v. Roberts, 18 C. P. R.	205
Rich v. Sargent Granite Co., 23 C. P. R.	359
Richards v. American Opera Co., 12 C. P. R.	184
Richards v. Brice, 16 C. P. R.	398
Richards v. Fuechsel, 5 C. P. R.	430
Richards Co., Victor v. 26 C. P. R.	295
Richardson v. Case, 3 C. P. R.	295
Richardson v. Emmett, 33 C. P. R.	50
Richardson, Jordan v. 7 C. P. R.	411
Richardson, etc., v. Mahler, 1 Law Rec.	220
Richardson, N. Y. Life Ins. Co. v. 2 Law Rec.	25
Richardt, Valentine v. 17 C. P. R.	289
Richmond, Matter of, 32 C. P. R.	213
Rickaby, Schenck v. 20 C. P. R.	384
Ridaback v. Metropolitan Ele. R. R., 1 Law Rec.	90
Riddle v. MacFadden, 38 C. P. R.	42
Ridgway v. Symons, 25 C. P. R.	23
Ridley, Hoffman v. 4 C. P. R.	41

	Page
Rief, Cook v. 8 C. P. R.....	133
Richmann Mantel Co., Gay v. 31 C. P. R.....	81
Riesgo v. Clark, 38 C. P. R.....	407
Riggs v. Shannon, 21 C. P. R.....	434
Riggs v. Stewart, 14 C. P. R.....	141
Riglander v. Starr Co., 34 C. P. R.....	92
Riker, Burnett v. 13 C. P. R.....	338
Riley, Hessberg v. 3 C. P. R.....	165
Riley, Nichols v. 39 C. P. R.....	192
Riley v. Pagan, 28 C. P. R.....	90
Riley, Place v. 4 C. P. R.....	393
Riley, Place v. 7 C. P. R.....	403
Riley v. Riley, 22 C. P. R.....	318
Riley, Zoeller v. 7 C. P. R.....	391
Rindskopf, In re, 8 C. P. R.....	246
Rinelander v. Dunham, 2 C. P. R.....	32
Ringe v. Mortimer, 38 C. P. R.....	75
Ringle v. Wallis Iron Works, 25 C. P. R.....	261
Ringle v. The Wallis Iron Co., 1 Law Rec.....	73
Ringler, Merges v. 3 Law Rec.....	197
Rionda, Dela v. Wings, 20 C. P. R.....	183
Rintoul, White v. 6 C. P. R.....	259
Rio Grande R. R. Co. v. Rothschild, 20 C. P. R..	197
Rising, Gifford v. 14 C. P. R.....	172
Risley v. Harlow, 35 C. P. R.....	266
Risley v. Rice, 11 C. P. R.....	367
Risley, Shaffer v. 16 C. P. R.....	369
Ritch, Fayerweather v. 27 C. P. R.....	324
Ritter, Corrigan v. 21 C. P. R.....	82
Riter, Oakes v. 39 C. P. R.....	245
Ritterman v. Ropes, 7 C. P. R.....	392
Rizer, Conlen v. 35 C. P. R.....	175
Robert v. Kidansky, 37 C. P. R.	1
Roberts, Adams v. 1 C. P. R.	204
Roberts v. Baumgarten, 18 C. P. R.	161
Roberts, Goldberg v. 5 C. P. R.	96
Roberts, Hurley v. 39 C. P. R.	29
Roberts, Lamberty v. 19 C. P. R.	63

	Page
Roberts v. Pike, 19 C. P. R.	422
Roberts v. Press Publishing Co., 18 C. P. R.	251
Roberts, Rich v. 18 C. P. R.	205
Roberts, The People v. 28 C. P. R.	185
Roberts, Wichham v. 37 C. P. R.	102
Robertson v. Brulatour, 37 C. P. R.	9
Robertson, Muser v. 4 C. P. R.	112
Robertson, Prickhardt v. 4 C. P. R.	112
Robetzky v. Hect, 3 C. P. R.	156
Robinson v. American Chemical Co., 9 C. P. R. ...	78
Robinson v. Chinese Chait B & A., 3 Law Rec. ...	16
Robertson, Exstein v. 17 C. P. R.	23
Robinson, Matter of, 29 C. P. R.	399
Robinson, Matter of, 39 C. P. R.	51
Robinson, Mutual Life Insurance Co. v. 28 C. P. R.	34
Robinson v. Ocean Steam Navigation Co., 15 C. P. R.	88
Robinson v. Ocean Steam Navigation Co., 16 C. P. R.	255
Robinson, Tebo v. 8 C. P. R.	141
Robinson v. The Columbia Spinning Co., 28 C. P. R.	135
Robinson v. The Evening Post Publishing Co., 28 C. P. R.	239
Robostelli v. Noxon, 17 C. P. R.	321
Roch, Dieffenbach v. 16 C. P. R.	172
Rochester, City of, Scham v. 16 C. P. R.	21
Rochester, Hornellsville & Lackawanna R. R. Co. v. New York, Lake Erie & Western R. R. Co., 14 C. P. R.	262
Rochester Dime Savings & Loan Association, People v. 26 C. P. R.	75
Rochester v. Mayor, etc. of New York, 9 C. P. R.	227
Rochester R. R. Co., Laney v. 24 C. P. R.	156
Rochester Railway Co., Phalen v. 28 C. P. R. ...	42
Rochester Railway Co., Saperstone v. 27 C. P. R.	133
Rochester Telephone Co. v. Priest, 35 C. P. R. ...	13

	Page
Rochford v. Metropolitan Street R'y., 30 C. P. R.	285
Rockefeller, Rice v. 14 C. P. R.	303
Rockwell v. Decker, 5 C. P. R.	62
Rockwood, Rogers v. 20 C. P. R.	212
Rodding, in re, 14 C. P. R.	47
Rodding, People ex rel. v. Grant, 10 C. P. R.	174
Roe, Goelet v. 25 C. P. R.	87
Roeber v. Dawson, 14 C. P. R.	354
Roeber v. Dawson, 15 C. P. R.	417
Roesch v. Lincoln Natl. Bank, 3 Law Rec.	8
Roffin, Martin v. 23 C. P. R.	59
Rogers, Bernard v. 3 Law Rec.	27
Rogers v. Earle, 23 C. P. R.	220
Rogers Farmers' & Merchants' National Bank of Buffalo v. 15 C. P. R.	250
Rogers, Hand v. 25 C. P. R.	254
Rogers, Laidley v. 23 C. P. R.	110
Rogers, Long v. 24 C. P. R.	63
Rogers, MacKellar v. 9 C. P. R.	6
Rogers v. Rockwood, 20 C. P. R.	212
Rogers, Vereinigte Pinselfabriken v. 31 C. P. R.	37
Rogers, Woolf v. 3 Law Rec.	148
Rohrs, Brassington v. 23 C. P. R.	146
Rolston v. Central Park, North and East River R. Co., 26 C. P. R.	365
Rome, Watertown & Ogdensburg R. R. Co., Gas Light Co. of Syracuse v. 11 C. P. R.	239
Rome, Watertown & Ogdensburgh R. R. Co., Kersh v. 14 C. P. R.	167
Romain v. Brewster, 24 C. P. R.	121
Romaine v. Chauncey, 21 C. P. R.	76
Ronalds v. Camman, 21 C. P. R.	320
Rood, Baldwin v. 15 C. P. R.	56
Roof v. Meyer, 8 C. P. R.	60
Roome v. Swan, 15 C. P. R.	344
Rooney, Guyon v. 17 C. P. R.	172
Roosa, Barley v. 20 C. P. R.	113
Roosevelt, Corning v. 18 C. P. R.	193, 399

	Page
Roosevelt v. Edson, 7 C. P. R.	5
Roosevelt, N. Y. Infant Asylum v. 7 C. P. R.	307
Root, Farrington v. 24 C. P. R.	196
Ropes, Ritterman v. 7 C. P. R.	392
Rose v. Meyer, 7 C. P. R.	219
Rosenback, Meyers v. 23 C. P. R.	363
Rosenbaum v. Rosenbaum, 15 C. P. R.	389
Rosenbaum v. Tabler, 3 Law Rec.	105
Rosenburg, Steel v. 24 C. P. R.	340
Rosenfield, Estate of, 10 C. P. R.	201
Rosenthal v. Bell Realty Co., 39 C. P. R.	131
Rosenthal v. Grouse, 7 C. P. R.	135
Rosenthal v. Rosenthal, 19 C. P. R.	56
Rosenthal v. Samuels, 3 Law Rec.	215
Rosenstock v. City of New York, 35 C. P. R.	72
Rosenwald v. Phenix Ins. Co. 9 C. P. R.	444
Rosenzweig Realty Operating Co., Davis v. 38 C. P. R.	455
Rosestock v. City of New York, 34 C. P. R.	16
Ross v. Butler, 19 C. P. R.	152
Ross, Estate of, 1 Law Rec.	20
Ross v. Markham, 5 C. P. R.	81
Ross v. Wigg, 6 C. P. R.	263
Ross v. Wigg, 6 C. P. R.	268
Ross v. Wigg, 8 C. P. R.	272
Roth v. Mautner, 37 C. P. R.	247
Rothschild, Bull v. 16 C. P. R.	356
Rothschild v. Dethridge Flint Glass Co., 22 C. P. R.	314
Rothchild v. Grand Trunk R. R. Co., of Canada, 19 C. P. R.	53
Rothschild, Gray v. 13 C. P. R.	351
Rothschild, Gray v. 14 C. P. R.	320
Rothschild, Rio Grande R. R. Co. v. 20 C. P. R. ..	197
Rothschild v. Sherman, 1 Law Rec.	154
Rothschild, Sherman v. 13 C. P. R.	359
Rothschild, Sherman v. 14 C. P. R.	328
Rothschild v. Whitman, 19 C. P. R.	58

	Page
Rothschild v. Wilson, 19 C. P. R.	76
Rothwell v. Paine, 9 C. P. R.	128
Rottenberg v. Dunn, 3 Law Rec.	216
Rouge v. Rouge, 25 C. P. R.	103
Rouse v. Haas, 27 C. P. R.	146
Routh, Elwin v. 1 C. P. R.	131
Routh v. N. Y. Elevated R. R. Co., 23 C. P. R. ...	95
Rowe v. Comley, 2 C. P. R.	424
Rowe v. Granger, 39 C. P. R.	141
Rowland v. Müller, 22 C. P. R.	25
Rowan, Simpson v. 13 C. P. R.	206
Rowell v. Lambert, 1 Law Rec.	31
Rowell v. Tuck, 1 Law Rec.	31
Rowell v. Winston, 1 Law Rec.	31
Rowland & Co., Willis v. 38 C. P. R.	383
Royal Exchange Shipping Co., Crowley v. 2 C. P. R.	124
Roycrofters, The, Gardner v. 39 C. P. R.	148
Rozas v. Met. Street Railway, 1 Law Rec.	241
Rubber Clothing Co., Woonsocket Rubber Co. v. 1 C. P. R.	350
Rubin, in re, 1 Law Rec.	206
Rubin v. Maine Steamship Co., 37 C. P. R.	29
Ruckgaber Sr. v. Moore, 31 C. P. R.	310
Rudd, Lock v. 3 Law Rec.	80
Rude v. Crandell, 11 C. P. R.	11
Rudolph v. Rudolph, 19 C. P. R.	424
Ruger v. Fayhs Watch Case Co., 20 C. P. R.	204
Runk, Anthony v. 3 Law Rec.	30
Ruland v. Canfield Publishing Co., 18 C. P. R. ...	282
Rumberg v. Johnson, 11 C. P. R.	283
Rundle v. Van Inwegan, 9 C. P. R.	328
Ruppaner, Matter of, 25 C. P. R.	159
Ruppert v. Haug, 1 C. P. R.	411
Ruser, Union Distilling Co. v. 21 C. P. R.	293
Ruslander, Cushing v. 15 C. P. R.	106
Russ v. Campbell, 1 C. P. R.	41
Russak, in re, 12 C. P. R.	390

	Page
Russak v. Tobias, 12 C. P. R.	391
Russell as adm. v. Brown, 3 Law Rec.	50
Russell, Canary v. 24 C. P. R.	109
Russo v. Darmstadt, 38 C. P. R.	76
Russy, Estate of Emily L. de, 20 C. P. R.	172
Ruth v. Davenport, 22 C. P. R.	121
Ruth v. Jones, 38 C. P. R.	472
Rutherford v. Krause, 24 C. P. R.	1
Ruttledge, Matter of, 30 C. P. R.	405
Rutty v. Person, 6 C. P. R.	25
Ryan v. Crane, 12 C. P. R.	431
Ryan, Livingston v. 2 Law Rec.	73
Ryan v. Murphy, 38 C. P. R.	249
Ryan v. Potter, 4 C. P. R.	80
Ryder, People ex rel. Griffin v. 22 C. P. R.	388
Ryder, People ex rel. Miller v. 20 C. P. R.	172
Ryder, Wilson v. 13 C. P. R.	69
Ryerson, Mooney v. 8 C. P. R.	435
Ryle, Gray v. 5 C. P. R.	387

S

St. George Vineyard Co. v. Fritz, 30 C. P. R. ...	253
St. John v. Andrews, 34 C. P. R.	279
St. John v. Eberlin, 3 Law Rec.	155
St. John, Holsman v. 2 C. P. R.	48
St. Louis etc. Co., Wood v. 1 C. P. R.	220
St. Michael's Church v. Behrens, 10 C. P. R. ...	181
St. Nicholas Bank, People v. 30 C. P. R.	30
St. Paul & Chicago R. R. Co., McLean v. 9 C. P. R.	394
St. Paul's Church v. Mt. Vernon Suburban Land Co., 38 C. P. R.	323
Sabata v. Sabata, 1 Law Rec.	64
Sabater, Reilly v. 26 C. P. R.	34
Sabin v. Hendrick, 25 C. P. R.	280

	Page
Sabin, Sheldon v. 4 C. P. R.	4
Sachs v. American Surety Co., 33 C. P. R.	41
Sacho, Kokomo Straw Board Co. v. 17 C. P. R. .	432
Sacia v. Decker, 1 C. P. R.	47
Sadlier v. Lyon, 24 C. P. R.	105
Safety Steam Generator Co. v. Dickson Mfg. Co., 21 C. P. R.	329
Saghomme v. Pugh & Co., 38 C. P. R.	422
Signal, Estate of, 1 Law Rec.	78
Salazar v. N. Y. & H. R. R. Co., 2 Law Rec.	213
Salisbury v. Bennett, 25 C. P. R.	306
Sallade v. Gerlach, 17 C. P. R.	420
Salmon v. Blasier Mfg. Co., 38 C. P. R.	437
Salmon v. Salmon, 3 Law Rec.	205
Salomon, Levy v. 12 C. P. R.	125
Salomon, National Park Bank v. 17 C. P. R.	6
Salomon v. Salomon, 17 C. P. R.	8
Salomon v. Salomon, 34 C. P. R.	113
Samuels v. Dun, 3 Law Rec.	216
Samuels, Lawrence v. 26 C. P. R.	10
Samuels, Ledoux v. 38 C. P. R.	48
Samuel, Rosenthall v. 3 Law Rec.	215
Sand v. Church, 27 C. P. R.	405
Sander v. Euling, 8 C. P. R.	166
Sanders v. Harris, 20 C. P. R.	258
Sanderson Bros. Steel Co., Sweet v. 6 C. P. R.	69
Sandland, Dalton v. 4 C. P. R.	73
Sands v. Miner, 1 Law Rec.	127
Sanford v. Crocheron, 8 C. P. R.	146
Sandford v. Goodwin, 20 C. P. R.	276 note
Sanford, McIntyre v. 2 C. P. R.	306
Sandford v. Sandford, 9 C. P. R.	289
Sanford v. Sanford, 12 C. P. R.	183
Sanford v. Sanford, 35 C. P. R.	65
Saperstone v. Rochester Railway Co., 27 C. P. R. .	133
Saqui, Solomon v. 13 C. P. R.	167
Saratoga Gas & Electric Light Co., N. Y. Security and Trust Co. v. 25 C. P. R.	385

	Page
Sargent, Granite Co. Bailey v. 23 C. P. R.	319
Sargent, Granite Co., Rich v. 23 C. P. R.	359
Sargent v. Warren, 11 C. P. R.	160
Sarle, Mock v. 17 C. P. R.	121
Sather Bk. Co. v. Hartwig, 3 Law Rec.	55
Satterlee, Gough v. 3 Law Rec.	40
Satterlee, Kavanaugh v. 34 C. P. R.	195
Satterlee, Peabody v. 2 Law Rec.	209
Sauer, Lynch v. 25 C. P. R.	287
Sauer v. Mayor etc., 30 C. P. R.	232
Saulpaugh, Hagenmeyer, 34 C. P. R.	66
Saunders, Guibert v. 13 C. P. R.	220
Savall v. Wauful, 21 C. P. R.	18
Savin, in re, 9 C. P. R.	175
Savin, Powers v. 22 C. P. R.	253
Sawyer v. Bennett, 22 C. P. R.	343
Sawyer v. Thurber, 14 C. P. R.	204
Saxe, Whitney v. 15 C. P. R.	450
Sayles v. Murphy, 8 C. P. R.	325
Sayres v. Miller, 10 C. P. R.	69
Schaeffel, Connor v. 19 C. P. R.	378
Schatzkin, Kramer v. 29 C. P. R.	86
Schacho v. Schacho, 1 Law Rec.	166
Schell v. Lowe, 23 C. P. R.	301
Schenck v. Barnes, 27 C. P. R.	354
Schenck v. Irwin, 21 C. P. R.	96
Schenck v. Rickaby, 20 C. P. R.	384
Schenectady Co-op. Realty Co., Ottman v. 39 C. P. R.	308
Schener, Steinau v. 2 Law Rec.	201
Schermerhorn, Kahn v. 2 Law Rec.	75, 131, 151
Scheringer, Levy v. 19 C. P. R.	346
Scherrer v. Ground Hog Mining and Milling Co., 28 C. P. R.	231
Scherer, Mullenhoff v. 15 C. P. R.	160
Scheu v. Lehnig, 4 C. P. R.	385
Schevitch, Bauer v. 11 C. P. R.	433
Schieffelin, Beecher v. 4 C. P. R.	230

	Page
Schieffelin, Butts v. 5 C. P. R.	416
Schieffelin, Thompson v. 4 C. P. R.	270
Schildwachter v. The Mayor, 24 C. P. R.	390
Schlegel v. American Beer & Bottling Co., 2 C. P. R.	393
Schiller v. Maltbie, 11 C. P. R.	304
Schliep, Union Trust Co. v. 23 C. P. R.	264
Schmalz v. Hauseman, 7 C. P. R.	414
Schmenger, Woelfie v. 12 C. P. R.	24, 312
Schmidt v. Barry, 21 C. P. R.	21
Schmidt v. Parker, 1 Law Rec.	16
Schmidtkunst v. Sutro, 16 C. P. R.	143
Schnitzler, Andrews v. 2 C. P. R.	18
Schmitz, Neurath v. 7 C. P. R.	400
Schneible v. Travelers' Ins. Co., 32 C. P. R.	273
Schneider v. Altman, 8 C. P. R.	242
Schneider v. Leitzman, 19 C. P. R.	217
Schneider, New York Lumber and Wood Work- ing v. 15 C. P. R.	30
Schnepp, Doctor v. 7 C. P. R.	144
Schnitzer v. Schaefer, 1 Law Rec.	248
Schnitzer, American Mills Co. v. 7 C. P. R.	150
Schoeller, Matter of, 33 C. P. R.	152
Schofield v. Kreiser, 21 C. P. R.	294
Schofield, Kreiser v. 24 C. P. R.	170
Scholl, Van Hatten v. 25 C. P. R.	247
Scholls, People ex rel. v. Supervisors of Oneida Co., 24 C. P. R.	152
Schoeneman v. Chamberlin, 29 C. P. R.	137
Schoonmaker v. Bonnie, 16 C. P. R.	64
Schovner v. Reed, 1 Law Rec.	224
Schneter, Vogle v. 23 C. P. R.	256
Schulhoff v. Co-Operative Dress Assn., 3 C. P. R.	412
Schuler, Lyons Natl. Bank v. 37 C. P. R.	303
Schuster v. Young, 1 Law Rec.	187
Schultze v. Mayor, 11 C. P. R.	54
Schultz v. Schultz, 2 C. P. R.	282
Schulz, Walsh v. 5 C. P. R.	357

	Page
Schultz, Walsh v. 6 C. P. R.	126
Schulz, Walsh v. 7 C. P. R.	209
Schum v. City of Rochester, 16 C. P. R.	218
Schuman v. Brooklyn Heights R. R., 32 C. P. R.	25
Schumann v. Davis, 19 C. P. R.	348
Schwarmecke, Matter of, v. Glenny, 38 C. P. R.	344
Scofield, Estate of, 3 C. P. R.	323
Scolley, McNulty v. 4 C. P. R.	250
Scott v. Engineering News Co., 1 Law Rec.	62
Scott, Henderson v. 6 C. P. R.	39
Scott, Mace v. 8 C. P. R.	200
Scott, Reed v. 8 C. P. R.	269
Scott, Schwartz v. 25 C. P. R.	53
Scott, Sherman v. 2 C. P. R.	366
Scott, Shipman v. 12 C. P. R.	109
Scott, Straus v. 29 C. P. R.	81
Scott, Walker v. 23 C. P. R.	9
Scott, Washington Life Insurance v. 39 C. P. R.	206
Scoville, Graves v. 12 C. P. R.	155
Schraeder, in re, 22 C. P. R.	55
Schram v. Werner, 24 C. P. R.	161
Schreiber v. Raymond & Campbell Mfg. Co., 26 C. P. R.	290
Schrenkeisen, Davis v. 2 Law Rec.	16
Schreyer v. Niebuhr v. 10 C. P. R.	72
Schrick v. Donohue, 34 C. P. R.	24
Schriever, Bolton v. 19 C. P. R.	398
Schriever v. Brooklyn Heights R. R., 30 C. P. R.	67
Schroeder, Irr v. 6 C. P. R.	253
Schwabb v. Elias, 2 C. P. R.	340
Schwab, Newberg v. 5 C. P. R.	19
Schweyer, Elias v. 27 C. P. R.	186
Schwartz v. Green, 20 C. P. R.	431
Schwartz, Hoffman v. 11 C. P. R.	200
Schwartz v. Scott, 25 C. P. R.	53
Schwartz v. Wechler, 23 C. P. R.	21
Schwartzchild v. Mathews, 3 Law Rec.	130

	Page
Seager, Steamship Richmond Hill Co. v. 27 C. P. R.	395
Seagrist, Estate of, 1 Law Rec.	138
Seamans v Barentsen, 34 C. P. R.	178
Seaman, Matter of, 32 C. P. R.	194
Searle, Van Camp v. 24 C. P. R.	16
Searls, Matter of, 27 C. P. R.	193
Searing v. Goodstein, 2 C. P. R.	464
Sears, Bristol v. 3 C. P. R.	328
Sears, Brown v. 27 C. P. R.	412
Sears, Hancock v. 4 C. P. R.	255
Sears v. Sears, 9 C. P. R.	432
Seasongood v. New York Elevated R. R. Co., 22 C. P. R.	100
Seaton v. Garison, 38 C. P. R.	51
Sebring v. Stryker, 24 C. P. R.	127
Seckel v. Tangermann, 38 C. P. R.	447
Second Ave. R. R. Co., Hayes v. 4 C. P. R.	84
Second Ave. R. R. Co., Hayes v. 5 C. P. R.	155
Second Avenue Railroad, Stevenson v. 2 Law Rec.	18
Second National Bank of Oswego v. Dunn, 2 C. P. R.	259
Second Natl. Bank of Oswego v. Dun, 4 C. P. R.	378
Second National Bank, Smith v. 32 C. P. R.	334
Secor, Smith v. 3 Law Rec.	25
Security Mutual Life Ins. Co., Kelly v. 37 C. P. R.	235
Security Mutual Life Insurance Co., McVey v. 39 C. P. R.	255
Seeber, Gray v. 17 C. P. R.	327
Seeibo v. Smith, 1 Law Rec.	72
Seeford, Mulligan v. 3 Law Rec.	85, 110
Seeth, in re, 1 Law Rec.	91
Segelke v. Finan, 15 C. P. R.	1
Segelkin v. Meyer, 5 C. P. R.	1, 258
Seibold, Gay v. 3 C. P. R.	169
Seidman v. Davis, 19 C. P. R.	348
Seidman v. Gieb, 19 C. P. R.	359
Seifret v. Kraft, 13 C. P. R.	321

	Page
Seiferd v. Mulligan, 28 C. P. R.	373
Seiler v. Wilson, 12 C. P. R.	267
Seiser Bro. Co. v. Potter Produce Co., 23 C. P. R.	348
Seligman v. Folk, 13 C. P. R.	77
Seligman v. Franco-American Trading Co., 17 C. P. R.	342
Seligman, Pettitt v. 39 C. P. R.	378
Seligman v. Wallach, 6 C. P. R.	232
Selkirk v. Wood, 9 C. P. R.	141
Selley v. Irish Industrial Exposition & Amusement Co., 38 C. P. R.	419
Semel v. Dunn, 28 C. P. R.	206
Semel v. Dunn, 3 Law Rec.	216
Semmes v. Noell, 18 C. P. R.	200 note
Senderling, Istok v. 38 C. P. R.	325
Seneca Lake Grape & Wine Co., People v. 17 C. P. R.	130
Seneca Button Co. Climax Specialty Co. v. 38 C. P. R.	476
Sess, Matter of, 1 Law Rec.	224
Sessions, Merchant v. 5 C. P. R.	24
Sewel Car Lighting Co., Porter v. 17 C. P. R.	386
Sexsmith, Dryer v. 10 C. P. R.	29
Sexton, Hall v. 15 C. P. R.	420
Seymour v. Ashenden, 13 C. P. R.	255
Seymour, Dyett v. 13 C. P. R.	127
Seymour v. Lorillard, 8 C. P. R.	90
Seymour v. Spring Forest Cemetery Association, 26 C. P. R.	39
Shafer, Bradley v. 22 C. P. R.	299
Shaffer v. Riseley, 16 C. P. R.	369
Shaffer v. Holm, 3 C. P. R.	81
Shaffer, Honeywell v. 18 C. P. R.	336
Shank, Hugg v. 17 C. P. R.	128
Shankland v. Bartlett, 15 C. P. R.	24
Shannon, Riggs v. 21 C. P. R.	434
Shannon, Tracy v. 16 C. P. R.	448

	Page
Shaped Seamless Stocking Co. v. Snow-Church Co., 26 C. P. R.	188, 315
Shapiro v. Burns 23 C. P. R.	365
Shea, James v. 2 C. P. R.	358
Shaw v. McCarty, 2 C. P. R.	23
Shearer, Estate of, 1 C. P. R.	455
Shearman v. Pope, 12 C. P. R.	329
Sheehan, Berry Brothers v. 37 C. P. R.	317
Sheehan v. Bradford, Berdell & Kinzua R. R. Co., 15 C. P. R.	429
Sheehan, Merchants Natl. Bank v. 9 C. P. R.	1
Sheet Metal Works, Matter of, 1 Law Rec.	230
Sheffield, An Infant, Matter of, 1 Law Rec.	10
Sheffield v. Mitchell, 2 Law Rec.	202
Sheldon v. Sabin, 4 C. P. R.	4
Sheldon, Matter of, 38 C. P. R.	352, 462
Shenstone v. Wilson, 38 C. P. R.	132
Shepherd, N. Y. Central & Hudson R. R. Co. v. 12 C. P. R.	125
Shepard v. Eddy, 15 C. P. R.	403
Shepherd, Horton v. 1 C. P. R.	26
Shepard v. Manhattan R. R. Co., 21 C. P. R. ..	453
Shepherd, N. Y. C. & H. R. R. Co. v. 10 C. P. R.	153
Shepherd v. Squire, 23 C. P. R.	403
Shepard v. Whaley, 19 C. P. R.	381
Sherman v. Boehm, 7 C. P. R.	34
Sherry v. Cary, 16 C. P. R.	50
Sheriff of Chautauqua Co., People ex rel. Pickard v. 11 C. P. R.	172
Sherman v. Green, 25 C. P. R.	190
Sherman, Grinnell v. 19 C. P. R.	139
Sherman, Jones v. 11 C. P. R.	410
Sherman v. Rothschild, 13 C. P. R.	359
Sherman v. Rothschild, 14 C. P. R.	328
Sherman v. Scott, 2 C. P. R.	366
Sherry v. Cary, 13 C. P. R.	256
Sherwin, Southern Navigation Co. v. 1 C. P. R.	44

	Page
Sherwood v. Gardner, 5 C. P. R.	239
Sherwood, in re, 1 Law Rec.	90
Sherwood v. Travellers Ins. Co., 2 C. P. R.	67
Sherwood v. Travelers' Ins. Co., 3 C. P. R.	281
Sherwood, Wintermeyer v. 23 C. P. R.	422
Shidlovsky v. Cashman, 26 C. P. R.	373
Shipherd, Keiher v. 4 C. P. R.	274
Shipherd, Keihen v. 16 C. P. R.	183
Shipiro, Kaplan v. 39 C. P. R.	155
Shipman v. Scott, 12 C. P. R.	109
Shipway v. Finck, 2 Law Rec.	45
Shonts v. Thomas, 38 C. P. R.	372
Shook, Perzel v. 5 C. P. R.	397
Short, Negley v. 18 C. P. R.	45
Shovlin v. Collis, 1 Law Rec.	166
Shrady v. Van Kirk, 33 C. P. R.	168
Shulenberg, Young v. 31 C. P. R.	368
Shupe, Swenarton v. 9 C. P. R.	402
Shutts, Anderson v. 37 C. P. R.	141
Sibley v. Equitable Life Ass. Co., 15 C. P. R. ...	316
Sickles, in re, 17 C. P. R.	138
Sickle, Passavant v. 14 C. P. R.	57
Sickle v. Sullivan, 22 C. P. R.	322
Sidney Sash, Blind & Furniture Co., Proctor v. 26 C. P. R.	84
Sieker v. Sieker, 3 Law Rec.	173
Siegrist v. Holloway, 7 C. P. R.	58
Siegel-Cooper, Standard Fashion Co. v. 3 Law Rec.	10
Silberthan, Danziger v. 21 C. P. R.	283
Signell, James v. 32 C. P. R.	38
Silling, Estate of 15 C. P. R.	279
Silver, Hegewisch v. 23 C. P. R.	41
Silver Islet Consolidated Mining & Land Co., Weeks v. 19 C. P. R.	87
Simis, Dunlop & Co. v. 3 Law Rec.	29
Simis v. McElroy, 20 C. P. R.	288
Simmons v. Hazard, 23 C. P. R.	15

	Page
Simmons v. Henry, 12 C. P. R.	204
Simmon's Soap Co., Obart v. 13 C. P. R.	227
Simon v. Aldine Publishing Co., 11 C. P. R.	267
Simon v. Aldine Publishing Co., 12 C. P. R.	290
Simon Blaut Co. v. Gruhn, 1 Law Rec.	169
Simon, Bloete v. 12 C. P. R.	114
Simon, Bundschu v. 23 C. P. R.	80
Simon v. Dunn, 3 Law Rec.	216
Simon, Estate of, 1 Law Rec.	24
Simon, Knapp v. 6 C. P. R.	1
Simon, Read v. 22 C. P. R.	196
Simon, Smith v. 32 C. P. R.	56
Sims v. Bonner, 21 C. P. R.	379
Simpson, Beer v. 22 C. P. R.	351
Simpson v. Maney, 37 C. P. R.	206
Simpson v. Jersey City Contracting Co., 30 C. P. R.	161
Simpson v. Jersey City Contracting Co., 31 C. P. R.	286
Simpson, Northwestern Masonic Aid Assn. v. 2 Law Rec.	111
Simpson v. Rowan, 13 C. P. R.	206
Simpson v. The Mayor etc., 1 Law Rec.	99
Sinclair, Canada Steamship Co. v. 3 C. P. R.	284
Singer, Estate of, 6 C. P. R.	389
Singer's Will, Matter of, 2 Law Rec.	56
Singhi, Delaney v. 3 Law Rec.	42
Sinne v. Mayor, 8 C. P. R.	252
Sire v. Kneuper, 15 C. P. R.	434
Sire v. Merrick, 17 C. P. R.	325
Sire McCarron v. 14 C. P. R.	225
Sisson, Reilly v. 4 C. P. R.	361
Sisson, Smadbeck v. 4 C. P. R.	353
Sizer v. Hampton B. R. & L. Co., 3 Law Rec.	151
Skeban, Estate of, 1 Law Rec.	138
Skinner v. Tibbetts, 13 C. P. R.	320
Skoog v. N. Y. Novelty Co., 4 C. P. R.	144

	Page
Slaight, Genesee Valley Canal R. R. Co. v. 14 C. P. R.	420
Slater v. Slater, 33 C. P. R.	355
Slatterly, Dwyer v. 39 C. P. R.	241
Sleeman, in re, Brown v. 12 C. P. R.	20
Sleeman, Tribune Assoc. v. 12 C. P. R.	21
Sloane v. Baird, 30 C. P. R.	361
Sloane v. N. Y. El. R. R., 1 Law Rec.	90
Sloane v. Tiffany, 34 C. P. R.	208
Slocum v. Stoddard, 7 C. P. R.	240
Slossen, Estate of, 4 C. P. R.	280
Smadbeck v. Sisson, 4 C. P. R.	353
Smales, Budd v. 38 C. P. R.	472
Smales, Budd v. 8 C. P. R.	230
Small, in re, 29 C. P. R.	57
Smathers, McIntyre v. 39 C. P. R.	243
Smith, Agricultural Company v. 35 C. P. R. ...	338
Smith v. Asiel, 3 Law Rec.	24
Smith, Atlas Refining Co. v. 31 C. P. R.	12
Smith v. Barnes, 24 C. P. R.	49
Smith v. Bowers, 3 C. P. R.	72
Smith, Boyd v. 3 C. P. R.	347, 416
Smith v. Burlington & H. R. R., 3 Law Rec.	79
Smith v. Burliss, 28 C. P. R.	89
Smith v. Central Trust Co., 1 Law Rec.	152
Smith v. Chenowith, 11 C. P. R.	138
Smith v. Chenoweth, 12 C. P. R.	89
Smith, Claffin v. 4 C. P. R.	240
Smith, Collender v. 26 C. P. R.	318
Smith, Commercial Telegraph Co. v. 19 C. P. R.	32
Smith v. Crissey, 4 C. P. R.	433
Smith, Crossman v. 38 C. P. R.	356
Smith v. Danzig, 3 C. P. R.	127
Smith v. Davis, 3 C. P. R.	74
Smith v. Davis, 4 C. P. R.	158
Smith v. Denton, 38 C. P. R.	342
Smith, DeVivier v. 6 C. P. R.	394
Smith v. Duffy, 8 C. P. R.	191, 419

	Page
Smith, Emil J., Matter of, 30 C. P. R.	95
Smith, Estate of William, 19 C. P. R.	302
Smith v. Farmer Type Founding Co., 26 C. P. R.	141
Smith v. Fitchett, 15 C. P. R.	207
Smith v. Fogarty, 6 C. P. R.	366
Smith v. Tozer, 11 C. P. R.	343
Smith, Gardner v. 2 C. P. R.	420
Smith v. Grant, 11 C. P. R.	354
Smith v. Green, 8 C. P. R.	163
Smith v. Havens Relief Society, 37 C. P. R.	299
Smith v. Holden, 38 C. P. R.	208
Smith, Horning v. 19 C. P. R.	142
Smith v. Inger, S. D. Co., 3 Law Rec.	119
Smith v. Ingraham University, 23 C. P. R.	393
Smith v. Irwin, 38 C. P. R.	58
Smith v. Jackson, 12 C. P. R.	428
Smith v. Joyce, 11 C. P. R.	357
Smith v. Keepers, 5 C. P. R.	66
Smith v. Ketaltas, 27 C. P. R.	209
Smith v. Ketaltas, 3 Law Rec.	21
Smith v. Kerr, 15 C. P. R.	126
Smith, Lampman v. 17 C. P. R.	19
Smith, Laude v. 6 C. P. R.	51
Smith, Lennon v. 22 C. P. R.	22
Smith v. Long, 3 C. P. R.	396
Smith v. Lynch, 12 C. P. R.	348
Smith, McCosker v. 20 C. P. R.	324
Smith v. Mahon, 2 C. P. R.	55
Smith, Matter of, 33 C. P. R.	115
Smith, Matthews v. 3 C. P. R.	157
Smith, Matthews v. 9 C. P. R.	165
Smith, Mead v. 3 C. P. R.	171
Smith, Merritt v. 29 C. P. R.	369
Smith, Munro v. 17 C. P. R.	158
Smith v. Pauli, 3 Law Rec.	106
Smith v. Pfister, 8 C. P. R.	409
Smith, Porter v. 7 C. P. R.	195
Smith & Pugsley, in re, 26 C. P. R.	377

	Page
Smith v. Raven, 2 Law Rec.	14
Smith, Rentz v. 22 C. P. R.	27
Smith, Sallie B. & Louise C. minors, 1 Law Rec.	85
Smith v. Second National Bank, 32 C. P. R.	334
Smith v. Secor, 3 Law Rec.	25
Smith v. Reid, 19 C. P. R.	363
Smith v. Simon, 32 C. P. R.	56
Smith v. Smith, 18 C. P. R.	28
Smith v. Smith, 23 C. P. R.	386
Smith v. Smith, 29 C. P. R.	282
Smith, Tim v. 3 C. P. R.	347, 416
Smith, Tompkins v. 1 C. P. R.	398
Smith, Toop v. 34 C. P. R.	211
Smith v. Weston, 24 C. P. R.	141
Smith, Wilson v. 20 C. P. R.	235
Smitheimer, Zust v. 19 C. P. R.	370
Smoot v. Heim, 1 C. P. R.	208
Smyth v. McCarthy, 2 Law Rec.	9
Snedeker v. Snedeker, 31 C. P. R.	180
Snell, Grow v. 4 C. P. R.	334
Snelling v. Getter, 27 C. P. R.	158
Sniffen v. Parker, 8 C. P. R.	393
Sniffen v. Peck, 6 C. P. R.	188
Snider Preserve Co., Allison v. 26 C. P. R.	298
Snow-Church Co. v. Hall, 26 C. P. R.	274
Snow-Church Co., Shaped Seamless Stocking Co. v. 26 C. P. R.	188, 315
Snyder, Andrews v. 6 C. P. R.	333
Snyder v. Debenbaum, 3 Law Rec.	7
Snyder v. Snyder, 4 C. P. R.	370
Snyder v. Snyder, 5 C. P. R.	267
Soher, Will of, 1 Law Rec.	174
Sohn, Estate of, 1 C. P. R.	373
Solomon v. Bennett, 32 C. P. R.	104
Solomon, Davis v. 28 C. P. R.	420
Solomon, People ex rel. v. Grant, 10 C. P. R.	158
Solomon v. Saqui, 13 C. P. R.	167
Sommers v. Christiano, 2 Law Rec.	155

	Page
Sommers v. Ditmas, 2 Law Rec.	117
Sommers, Peetsch v. 28 C. P. R.	124
Sone, Hagan v. 32 C. P. R.	288
Sons of Isaacs v. Karp, 1 Law Rec.	227
Soria v. Davidson, 9 C. P. R.	23
Soto, Republic of Honduras v. 14 C. P. R.	9
Soto, Republic of Honduras v. 16 C. P. R.	270
Soule, Estate of, 13 C. P. R.	171
Soussman, Jaffray v. 17 C. P. R.	1
South B'kl'n Saw Mill Co., Dock v. 6 C. P. R.	144
Southard, Daniels v. 29 C. P. R.	39
Southard v. Franco-American Trading Co., 15 C. P. R.	112
Southerland v. McKinney, 18 C. P. R.	216
Southern Navigation Co. v. Sherwin, 1 C. P. R.	44
Southern Ry. Co., Boyle v. 32 C. P. R.	218
Southern Tier Masonic Relief Association, Meade v. 39 C. P. R.	33
Spafard, Joyce v. 9 C. P. R.	342
Spalding, Taylor v. 12 C. P. R.	123
Spargur, Chadwick v. 1 C. P. R.	422
Spaulding v. American Wood Board Co., 25 C. P. R.	376
Spaulding, Estate of, 1 Law Rec.	139
Spaulding, Forbes v. 8 C. P. R.	135
Spaulding, Matter of, 35 C. P. R.	27
Speelman, McBlaine v. 6 C. P. R.	401
Spencer v. Hunting, Executrix, 34 C. P. R.	30
Spencer v. State, 38 C. P. R.	136
Spencer v. Wait, 9 C. P. R.	93
Spero v. Schultz, 1 Law Rec.	187
Sperry v. Hellman, 20 C. P. R.	218
Sperb v. McCoun, 15 C. P. R.	371
Spier v. Lockwood, 29 C. P. R.	164
Spier v. Michelsen, 25 C. P. R.	188
Spies v. Michelson, 1 Law Rec.	17
Splicss v. Meyer, 20 C. P. R.	157
Spofford, Cromwell v. 4 C. P. R.	273

	Page
Spofford, Gorton Steamer Co. v. 5 C. P. R.	116
Spooner, Cartier v. 39 C. P. R.	127
Spoor v. Cornell, 12 C. P. R.	319
Sportsmans Association, in re, 15 C. P. R.	215
Sprague, Parsons v. 3 C. P. R.	290
Sprague, Parsons v. 6 C. P. R.	26
Sprague, Parsons v. 11 C. P. R.	17
Sprague v. Swift, 3 C. P. R.	34
Spratt, Will of, 1 Law Rec.	162
Spreen, Estate of, 1 C. P. R.	375
Sprigg v. Dishmann, 3 Law Rec.	63
Spring, Fisk v., 1 C. P. R.	378
Spring Forest Cemetery Association, Seymour v. 26 C. P. R.	39
Spuyten Duyvil, etc. Co. v. Williams, 1 C. P. R.	280
Sreferman v. Wolfrath, 28 C. P. R.	55
Squer v. T. Ward Co., 3 Law Rec.	9
Squier, Gebhard v. 13 C. P. R.	43
Squire, McDonald v. 23 C. P. R.	150
Squire, Shepherd v. 23 C. P. R.	403
Squires, Syracuse Moulding Co. v. 19 C. P. R. ..	241
Squires, Syracuse Moulding Co. v. 21 C. P. R. ..	58
Stacy, Stow v. 14 C. P. R.	45
Stagg, Estate of, 6 C. P. R.	88
Stahl v. Wadsworth, 13 C. P. R.	32
Stalp, Herman v. 17 C. P. R.	333
Standard Gas Light Co., Gas Works Construc- tion Co. v., 13 C. P. R.	405
Standard Fashion Co. v. Sigel-Cooper, 3 Law Rec.	10
Standard Wine Co., Tyler v. 38 C. P. R.	105
Stanley v. Stanley, 38 C. P. R.	255
Stanley, Thompson v. 22 C. P. R.	348, 421
Stanton v. Freund, 3 Law Rec.	158
Stanton, McVitey v. 20 C. P. R.	409
Stanton v. Missouri Pacific Railway Co., 15 C. P. R.	296

	Page
Stanton v. United States Pipe Line Co., 25 C. P. R.	180
Stapleton, Matter of, 33 C. P. R.	25
Star Co., Riglander v. 34 C. P. R.	92
Star Printing Co., Goth v. 14 C. P. R.	3
Starbuck, Avery v. 11 C. P. R.	396
Starbuck v. Farmers Loan & Trust Co., 2 Law Rec.	106
Starin, Mills & Gibb v. 39 C. P. R.	338
Staten Island Rapid Transit Co., Winslow v. 15 C. P. R.	202
State Board of Tax Commissioners, People ex Rel. N. Y. C. & H. R. R. R. Co. v. 32 C. P. R.	341
State of New York, Flack v. 5 C. P. R.	286
State of N. Y. v. Equitable Mutual Fire Ins. Corp., 25 C. P. R.	210
State, Spencer v. 38 C. P. R.	136
Staunton v. Swann, 10 C. P. R.	12
Steam Fitters v. Natl. Prot. Asso., 3 Law Rec. ...	45
Steamship Richmond Hill Co., Seager v. 27 C. P. R.	395
Stearns v. Marr, 34 C. P. R.	300
Stearn v. Wabash Railway Co., 37 C. P. R.	380
Stebbins v. Cowles, 4 C. P. R.	303
Steck, Kerner v. 18 C. P. R.	286
Stedeker v. Bernard, 9 C. P. R.	374
Steffin v. Steffin, 4 C. P. R.	179
Steffin v. Steffin, 19 C. P. R.	267
Steele v. MacDonald, 4 C. P. R.	227
Steele, Moody v. 10 C. P. R.	67
Steele, Moody v. 11 C. P. R.	205
Stæel v. Rosenberg, 24 C. P. R.	340
Steencken and Bolte, Matter of, 30 C. P. R.	329
Steiger v. London, 38 C. P. R.	62
Steiker v. Platt, 1 Law Rec.	255
Stein v. Dunne, 38 C. P. R.	328
Stein, in re, 1 Law Rec.	93
Stein, Wahed El Tuzi v. 20 C. P. R.	125
Stine v. Greene, 32 C. P. R.	222

	Page
Steinbach v. Prudential Ins. Co., 33 C. P. R.	218
Stinebaker v. Stinebaker, Jr., 1 Law Rec.	258
Steinberger v. Steinberger, 1 Law Rec.	183
Steinburg v. Kaufmann, 2 Law Rec.	180
Steinau v. Scheuer, 2 Law Rec.	201
Steiner v. East River Savings Inst'n., 32 C. P. R.	42
Steiner, in re, Torney v. 23 C. P. R.	333
Steiner v. Presbyterian Church, 31 C. P. R.	121
Steinfeld, Globe Electric Construction Co. v. 2 Law Rec.	8
Steinhardt v. Merriam Co., 1 Law Rec.	200, 201
Steinhardt v. Michalda, 15 C. P. R.	373
Steinhardt v. Tusk, 1 Law Rec.	197
Steitz, Holmes, Booth & Hayden v. 6 C. P. R.	362
Stephens, Guggenheimer v. 17 C. P. R.	383
Stephens v. Hall, 19 C. P. R.	37
Stephens v. Meriden Britannia Co., 30 C. P. R.	192
Stephens, Myers v. 38 C. P. R.	432
Stephens as Receiver etc. of the McCall Pub. Co. v. Page, 23 C. P. R.	191
Stephenson v. Hanson, 4 C. P. R.	104
Stephenson v. Hanson, 6 C. P. R.	43
Sterling, Estate of Alexander F., 9 C. P. R.	448
Sterling, Niagara Falls Paper Co., 25 C. P. R.	251
Stern, Blackington v. 18 C. P. R.	63
Stern, Englefield v. 18 C. P. R.	63
Stern v. Knapp, 8 C. P. R.	54
Stern v. Ladew, 30 C. P. R.	135
Stern v. Marcuse, 39 C. P. R.	251
Stern v. Metropolitan Telephone & Telegraph Co., 26 C. P. R.	353
Stern v. Moss, 6 C. P. R.	184
Stern, People ex rel. v. New York Society for Pre- vention of Cruelty to Children, 29 C. P. R.	191
Sterns Realty Co., Hegeman v. 38 C. P. R.	429
Stern, Schenkeim v. 18 C. P. R.	63
Stern, Wickham v. 18 C. P. R.	63
Sternberger, Damers v. 38 C. P. R.	362

	Page
Stetson v. Stetson, 3 Law Rec.	72
Stevens, Adams v. 23 C. P. R.	356
Stevens, Lewis v. 4 C. P. R.	224
Stevens, Maddock v. 15 C. P. R.	248
Stevens v. N. Y. Elevated R. R. Co., 18 C. P. R. ...	350
Stevens v. Webb, 4 C. P. R.	64
Stevenson Brewing Co., Gallagher v. 25 C. P. R.	107
Stevens v. N. Y. Life Ins. Co., 1 Law Rec.	214
Stevenson v. New York, Lake Erie & Western R. R. Co., 14 C. P. R.	384
Stevenson v. Second Ave. R. R., 2 Law Rec.	18
Steward, Estate of, 8 C. P. R.	354
Stewart, Clason v. 3 Law Rec.	81
Stewart v. J. Harper Bonnell Co., 2 Law Rec. ...	28
Stewart v. Humphries, 1 Law Rec.	217
Stewart, Jones v. 7 C. P. R.	164
Stewart v. Paton, 23 C. P. R.	286
Stewart, Putnam v. 2 C. P. R.	172
Stewart, Riggs v. 14 C. P. R.	141
Stewart, Stringham v. 8 C. P. R.	420
Stibbard v. Jay, 29 C. P. R.	22
Stichter v. Tillinghast, 11 C. P. R.	413
Stiefel v. Berlin, 27 C. P. R.	216
Stieglitz v. Belding, 26 C. P. R.	311
Stietz, Matthews v. 5 C. P. R.	235
Stiger, Howard v. 2 Law Rec.	18
Stimmel, Perkins v. 17 C. P. R.	251
Stillwater v. Stillwater, 24 C. P. R.	124
Stillwell, Bowen v. 9 C. P. R.	277
Stillwell, Ruelkan v. 28 C. P. R.	242
Stirling Ins. Co., Graham v. 19 C. P. R.	452
Stirn v. Nash, 19 C. P. R.	184
Stitt, Coffin v. 5 C. P. R.	261
Stoddard, Slocum v. 7 C. P. R.	240
Stoddard, Weston v. 22 C. P. R.	51
Stohl, Delin v. 2 C. P. R.	222
Stoker v. Walters, 38 C. P. R.	511
Stokes, Biershenk v. 23 C. P. R.	375

	Page
Stokes, Estate of, 3 C. P. R.....	384
Stokes v. Manhattan Railway, 30 C. P. R.....	177
Stone, Foley v. 15 C. P. R.....	224
Stone, Foley v. 18 C. P. R.....	190
Stone v. Greenwich Savings Bank, 1 Law Rec..	240
Stone v. Pratt, 25 C. P. R.....	176
Stonebridge v. Smith, 1 Law Rec.....	192
Storer v. Times Printing and Publishing Co., 17 C. P. R.....	181
Storm, Le Massena, Jr., v. 32 C. P. R.....	119
Story v. Livingston, 1 Law Rec.....	44
Stout, Dolbeer v. 21 C. P. R.....	359
Stow v. Stacy, 14 C. P. R.....	45
Stowell v. Estate, in re, 25 C. P. R.....	316
Strachan, Williard v. 3 C. P. R.....	452
Strakosch v. Press Publishing Co., 17 C. P. R..	209
Strauss, Berolzheimer v. 7 C. P. R.....	225
Strauss, Forester v. 21 C. P. R.....	166
Straus v. Kreis, 6 C. P. R.....	77
Strauss, Matter of, 27 C. P. R.....	291
Strauss v. Scott, 29 C. P. R.....	81
Strauss v. Vogt, 23 C. P. R.....	251
Strickland, Burgett v. 5 C. P. R.....	276
Stringfield v. Fields, 7 C. P. R.....	356
Stringham v. Stewart, 8 C. P. R.....	420
Strobel v. Estate of, 1 Law Rec.....	25
Strohn, Matter of, 38 C. P. R.....	171
Strohn v. Epstein, 6 C. P. R.....	36
Strong, Eighme v. 15 C. P. R.....	119
Strong, Fagan v. 17 C. P. R.....	438
Strong, Fagan v. 19 C. P. R.....	88
Strong v. Jenkins, 21 C. P. R.....	9
Strong, McIntyre v. 2 C. P. R.....	36
Stowbridge Lithographic Co. v. Crane, 20 C. P. R.	15
Stryker, Sebring v. 24 C. P. R.....	127
Stuart v. Stuart, 3 Law Rec.....	132
Studwell, Estate of, 8 C. P. R.....	414

	Page
Stuebing v. Marshall, 2 C. P. R.....	77
Stueve, Kittell v. 24 C. P. R.....	223
Stumpf, Gick v. 37 C. P. R.....	98
Sturz v. Fischer, 1 Law Rec.....	5, 8
Sturz v. Fischer, 25 C. P. R.....	202
Stuyvesant v. Weil, 29 C. P. R.....	319
Stuyvesant v. Weil, 32 C. P. R.....	127
"Sugar Trust" Case, 16 C. P. R.....	1
Sugden v. Magnolia Metal Co., 32 C. P. R.....	18
Sugo, Hahl v. 32 C. P. R.....	265
Sinsheimer, Hilton v. 5 C. P. R.....	355
Sullivan, Bidwell v. 26 C. P. R.....	392
Sullivan v. Clark, 2 Law Rec.....	66
Sullivan v. Clark, 19 C. P. R.....	147
Sullivan, Galen v. 38 C. P. R.....	112
Sullivan, Garrabrants v. 13 C. P. R.....	198
Sullivan v. Harney, 38 C. P. R.....	345
Sullivan, Hunt v. 33 C. P. R.....	294
Sullivan v. McCann, 37 C. P. R.....	113
Sullivan v. N. Y., N. H. & Hartford R. R., 1 C. P. R.	285
Sullivan v. New York & Rosedale Cement Co., 14 C. P. R.....	365
Sullivan v. Remington Manufacturing Co., 2 C. P. R.	68
Sullivan, Sickie v. 22 C. P. R.....	322
Sullivan v. Tioga R. R. Co., 12 C. P. R.....	301
Sun Publishing Co., Parrish v. 2 Law Rec.....	130
Supreme Council of American Legion of Honor, Beil v. 29 C. P. R.....	332
Supreme Council, Catholic Mutual Benefit Ass'n, Fanning v. 32 C. P. R.....	82
Supreme Lodge of Knights and L. of Honor, Grossman v. 16 C. P. R.....	215
Supreme Lodge of the Knights of Honor, Le- zensky v. 20 C. P. R.....	10
Supreme Sitting Order of Iron Hall, Glines v. 22 C. P. R.....	437

	Page
Supervisors of Oswego, People ex rel, Village of	
Fulton v. 15 C. P. R.....	379
Sutherland v. Bradner, 7 C. P. R.....	90
Sutphen v. Clark, 39 C. P. R.....	313
Sutornis, Bartlett v. 17 C. P. R.....	259
Sutorius v. Dunstan, 20 C. P. R.....	241
Sutorius v. North, 20 C. P. R.....	162
Sutro, Schmidlkunst v. 16 C. P.	143
Sutton v. Newton, 7 C. P. R.....	333
Suyer v. Ward, 3 Law Rec.....	190
Swan, Allen v. 6 C. P. R.....	56
Swan, Roome v. 15 C. P. R.....	344
Swann, Staunton v. 10 C. P. R.....	12
Swanscoat v. Remsen & Manice, 26 C. P. R....	94
Sweeney, Bowen v. 22 C. P. R.....	79
Sweeney, Bowen v. 25 C. P. R.....	128
Sweeney, Hennessey v. 28 C. P. R.....	332
Sweet, Cole v. 37 C. P. R.....	86
Sweet, Cole v. 38 C. P. R.....	290
Sweet v. Morris, 12 C. P. R.....	175
Sweet v. Sanderson Bros. Steel Co., 6 C. P. R...	69
Swenarton v. Shupe, 9 C. P. R.....	402
Schwan v. Mutual Trust Fund Life Ass'n, 9 C.	
P. R.	82
Swick, Haas v. 23 C. P. R.....	397
Swick, Reynolds v. 7 C. P. R.....	141
Swift, Sprague v. 3 C. P. R.....	34
Swift v. Wheeler, 13 C. P. R.....	343
Syme, Aultman & Taylor Co. v. 26 C. P. R....	219
Syme, Aultman Taylor Co. v. 30 C. P. R.....	334
Syme, Taylor v. 26 C. P. R.....	285
Syme, Taylor v. 31 C. P. R.....	1
Symons, Ridgway v. 25 C. P. R.....	23
Syracuse Moulding Co. v. Squires, 19 C. P. R...	241
Syracuse Moulding Co. v. Squires, 21 C. P. R...	58
Syracuse Savings Bank v. Burton, 6 C. P. R....	216

T

	Page
Taber v. Taber, 21 C. P. R.	340
Tabler, Rosenbaum v. 3 Law Rec.	105
Taft v. Marsilly, 14 C. P. R.	415
Tailer, Marx v. 12 C. P. R.	226
Talbot v. Dorin & Wright Co., 18 C. P. R.	304
Talbot v. Laubhein, 39 C. P. R.	171
Tallman v. Bernhard, 23 C. P. R.	284
Tallman, Lowerre v. 28 C. P. R.	21
Tallman, Pruden v. 6 C. P. R.	300
Tampsen, Corn v. 25 C. P. R.	238
Tampsen, ex rel, Pond v. 25 C. P. R.	141
Tamsen, Herzog v. 27 C. P. R.	165
Tangermann, Seckel v. 38 C. P. R.	447
Tator, Adams v. 19 C. P. R.	114
Tansand v. Handlaar, 31 C. P. R.	170
Tausig, Davenport Glucose Mfg. Co. v. 5 C. P. R.	69
Taussig, Davenport Glucose Co. v. 6 C. P. R.	152
Taussig, Havemeyer Sugar Refg. Co. v. 12 C. P. R.	247
Taussig, Howell v. 12 C. P. R.	252
Tautog Fishing Club, In re, 1 Law Rec.	218
Taylor, Baremore v. 9 C. P. R.	76
Taylor, Briggs v. 4 C. P. R.	328
Taylor v. Brooklyn Elevated R. R. Co., 18 C. P. R.	72
Taylor, Ellis v. 3 Law Rec.	126
Taylor, Estate of, 8 C. P. R.	453
Taylor, Harris v. 3 Law Rec.	2
Taylor v. Long Island Railway Co., 28 C. P. R.	118
Taylor v. McLee, 19 C. P. R.	429
Taylor v. Meldrum, 6 C. P. R.	235
Taylor v. Pinckney, 12 C. P. R.	107
Taylor v. Spalding, 12 C. P. R.	123
Taylor v. Syme, 26 C. P. R.	285
Taylor v. Syme, 31 C. P. R.	1
Taylor v. Taylor, 28 C. P. R.	323
Taylor v. Wing, 1 C. P. R.	43
Taylor v. Wright, 28 C. P. R.	108

	Page
Tazi, Wahed El. v. Stein, 20 C. P. R.....	125
Teal v. Yost, 16 C. P. R.....	367
Tebo v. Robinson, 8 C. P. R.....	141
Tefft v. Epstein, 17 C. P. R.....	168
Tefft, Higgins v. 2 Law Rec.....	1
Ten Eyck v. Town of Warwick, 24 C. P. R.....	6
Tenney v. Mautner, 1 C. P. R.....	64
Terrill v. Wheeler, 13 C. P. R.....	178
Terry v. Bange, 18 C. P. R.....	288
Terry, Horn v. 22 C. P. R.....	432
Tew, Wolfsohn v. 33 C. P. R.....	278, 382
Texas Crude Oil & Mining Co., Gayard v. 38 C. P. R.	351
Thalheimer v. Hayes, 14 C. P. R.....	232
Thankson v. Tilden, 3 Law Rec.....	209
Thayer v. McNaughton, 18 C. P. R.....	3
Thedford, Crosby v. 7 C. P. R.....	245
Theiss, Kelly v. 27 C. P. R.....	129
The Charles E. Corbett Assn., In re, 1 Law Rec.	219
The City of New York, Dean v. 27 C. P. R.....	317
The Columbia Spinning Co., Robinson v. 28 C. P. R.	135
The Congregational Unitarian Society v. Hale, 27 C. P. R.....	303
The Evening Post Publishing Co., Robinson v. 28 C. P. R.....	239
The Hudson City Savings Inst., Cosgriff v. 27 C. P. R.	263
The Lawyers' Surety Co., Lester v. 30 C. P. R..	388
The Lohengrin Social Club, In re, 1 Law Rec...	218
The Manhattan Railroad, Stokes v. 30 C. P. R..	177
The Mayor, etc., Comlay v. 1 C. P. R.....	306
The Mayor, etc., Dickenson v. 3 C. P. R.....	93
The New York Steam Co., Koehler v.....	35
The People v. Roberts, 28 C. P. R.....	185
The Pindar Club, In re, 1 Law Rec.....	219
The Rising Sun Social Club, In re, 1 Law Rec..	219
The St. Clair Paper Co. v. Brown, 1 Law Rec...	232

	Page
The Sicillian Asphalt Paving Co., Reiley v. 28 C. P. R.	59
The Star Company, Oakes v. 39 C. P. R.	341
The Sun Printing and Publishing Co., Galligan v. 28 C. P. R.	349
The Tehauntepec Railway Co., De Stuckle v. 3 C. P. R.	410
Thingvalla Steamship Co., Bengtson v. 3 C. P. R.	263
Thingvalla Steamship Co., Bengtson v. 4 C. P. R.	260
Third Ave R. R. Co., Feist v. 25 C. P. R.	257
Third Avenue Railroad v. Klinker, 29 C. P. R.	51
Thistle v. Thistle, 5 C. P. R.	43
Thoesen v. Crowe, 19 C. P. R.	74
Thomas v. Keeler, 16 C. P. R.	408
Thomas v. New York & Greenwood Lake R. R. Co., 22 C. P. R.	326
Thomas v. N. Y. Life Ins. Co., 8 C. P. R.	1
Thomas, Shonts v. 38 C. P. R.	372
Thomas v. Utica & Black River R. R. Co., 6 C. P. R.	353
Thompson v. Attica Water Co., 1 C. P. R.	368
Thompson-Houston Electric Co., Durant Land Imp. Co. v. 23 C. P. R.	29
Thompson, Estate of, 1 C. P. R.	264
Thompson v. Freeman, 16 C. P. R.	186
Thompson Co. v. Lobenthall, 24 C. P. R.	247
Thompson, Peoples Bank v. 24 C. P. R.	62
Thompson v. Remsen, 29 C. P. R.	102
Thompson v. Schieffelin, 4 C. P. R.	270
Thorn v. Beard, 23 C. P. R.	189
Thornburg, Leach v. 2 Law Rec.	101, 102
Thorp v. Adams, 18 C. P. R.	279
Thorp v. Adams, 19 C. P. R.	351
Thrall, In re, 1 Law Rec.	209
Thompson v. Stanley, 22 C. P. R.	348, 421
Thompson v. Thompson, 16 C. P. R.	317
Thomson, Milliken v. 12 C. P. R.	163
Thompson v. Whitmarsh, 8 C. P. R.	183

	Page
Thurber, Almy v. 3 C. P. R.....	351
Thurber, Matter of, 30 C. P. R.....	261
Thurber, Sawyer v. 14 C. P. R.....	204
Tibbets, Agar v. 18 C. P. R.....	388
Tibbitts, Skinner v. 13 C. P. R.....	370
Tice, Van Aken v. 2 Law Rec.....	148
Tietjen, Mutual Milk & Cream Co. v. 34 C. P. R.	29
Tiffany, Brooks Bros. v. 38 C. P. R.....	229
Tiffany Chemical Co., In re, 13 C. P. R.....	222
Tiffany, Sloane v. 34 C. P. R.....	208
Tiffany, Wainwright v. 13 C. P. R.....	222
Tift v. Bloomfield, 4 C. P. R.....	349
Tighe v. Buckley, 1 Law Rec.....	235
Tilden v. Aitkin, 29 C. P. R.....	28
Tilden, Estate of, 5 C. P. R.....	449
Tilden, Estate of, 6 C. P. R.....	15
Tilden, Thankson v. 3 Law Rec.....	209
Tillinghast, Stechter v. 11 C. P. R.....	413
Tillotson, Learned v. 6 C. P. R.....	225
Tilton v. Vail, 17 C. P. R.....	194
Tilyon, Koppel v. 31 C. P. R.....	185
Tim v. Smith, 3 C. P. R.....	347, 416
Times Printing & Publishing Co., Storer v. 17 C. P. R.	181
Timony v. Hoppock, 13 C. P. R.....	361
Tinker v. Connecticut Trust Co., 29 C. P. R....	6
Tioga R. R. Co., Sullivan v. 12 C. P. R.....	301
Tirpak v. Hoe, 39 C. P. R.....	68
Titman v. Mayor, 20 C. P. R.....	376
Tittlebaum v. Losola, 1 Law Rec.....	48
Titus v. Fairchild, 4 C. P. R.....	418
T. New, Manfg. Co. v. Galway, 23 C. P. R.....	239
Tober v. Stonebridge, 1 Law Rec.....	4
Tobey v. McDermott, 1 Law Rec.....	51
Tobias, Russak v. 12 C. P. R.....	391
Tobias v. Van der Linden, 1 Law Rec.....	136
Tod, Industrial and General Trust, 34 C. P. R..	287
Todd v. Botchford, 1 C. P. R.....	402

	Page
Todd v. Dortemus, 21 C. P. R.....	74
Todd v. Eighime, 1 Law Rec.....	159
Todd, Hatfield v. 13 C. P. R.....	265
Todd, King v. 21 C. P. R.....	114
Todd v. Marisilly, 15 C. P. R.....	347
Tode, Galle v. 21 C. P. R.....	147, 152
Tolhurst, Townsend v. 19 C. P. R.....	1
Tonnelle, Bean v. 1 C. P. R.....	33
Tompkins, Kennerly v. 17 C. P. R.....	428
Tompkins v. Smith, 1 C. P. R.....	398
Toole v. Board of Supervisors of Oneida Co., 25 C. P. R.....	267
Toop v. Smith, 34 C. P. R.....	211
Toplanyi, Ess v. 4 C. P. R.....	173
Topping, Estate of, 18 C. P. R.....	115
Topping, Estate of, 20 C. P. R.....	357
Torney v. Stiner, In re, 23 C. P. R.....	333
Torrey, Frey v. 32 C. P. R.....	386
Toube Co. Solomon, Butler Hard Rubber Co. v. 38 C. P. R.....	23
Toulmin, Whithers v. 13 C. P. R.....	1
Tourgee, Fleming v. 21 C. P. R.....	297
Town of Hornby, Brazee v. 29 C. P. R.....	296
Town of Oyster Bay, Jacob v. 39 C. P. R.....	345
Town of Ulysses v. Ingersol, 35 C. P. R.....	111
Townsend, Andrews v. 2 C. P. R.....	76
Townsend v. Auld, 24 C. P. R.....	181
Townsend v. Bell, 32 C. P. R.....	111
Townsend v. Coon, 7 C. P. R.....	56
Townsend v. Fromer, 15 C. P. R.....	8
Townsend v. Hillman, 18 C. P. R.....	213
Townsend v. Hopkins, 9 C. P. R.....	257
Townshend, Kings v. 23 C. P. R.....	326
Townshend, Landen v. 16 C. P. R.....	161
Townsend v. Mayor, 20 C. P. R.....	200
Townsend v. N. Y. Life Ins. Co., 4 C. P. R.....	398
Townsend v. O'Bogert, 20 C. P. R.....	262
Townsend v. Tolhurst, 19 C. P. R.....	1

	Page
Tozer, Smith v. 11 C. P. R.....	343
Tracy, Estate of, 2 Law Rec.....	161
Tracy v. Falvey, 34 C. P. R.....	189
Tracy v. Lichtenstadter, 37 C. P. R.....	146
Tracy v. Tracy, 20 C. P. R.....	98
Tracy v. Shannon, 16 C. P. R.....	448
Tradesman Bank, Tucker v. 2 Law Rec.....	58
Train v. Friedman, 4 C. P. R.....	109
Trask, Estate of, 2 Law Rec.....	81
Trask, Matter of, 27 C. P. R.....	7
Travelers Ins. Co., Schneible v. 32 C. P. R.....	273
Travelers Ins. Co., Sherwood v. 2 C. P. R.....	67
Travelers Insurance Co., Sherwood v. 3 C. P. R.....	281
Travest v. Alport, 13 C. P. R.....	161
Travis v. Haan, 39 C. P. R.....	247
Travis v. Travis, 14 C. P. R.....	307
Traube, Regan v. 18 C. P. R.....	332
Traynor, Keilty v. 28 C. P. R.....	342
Treadwell Co., Gillig v. 25 C. P. R.....	197
Treanor v. Manhattan R. R. Co., 21 C. P. R.....	364
Tregoning v. Tregoning, 1 Law Rec.....	123
Trenndlich v. Hall, 7 C. P. R.....	62
Treskow v. Treskow, 3 Law Rec.....	126
Treu, Harris v. 25 C. P. R.....	93
Tribble v. Kilgannon, 24 C. P. R.....	400
Tribune Association, Funk v. C. P. R.....	408
Tribune Association, Levey v. 3 Law Rec.....	3
Tribune Association v. Sleeman, 12 C. P. R.....	21
Tribune Association, Witcher v. 20 C. P. R.....	283
Trimmer, Moore v. 17 C. P. R.....	99
Tripp v. Daboll, 11 C. P. R.....	112
Tripp v. Fowler Shirt, etc., Co., 1 Law Rec.....	55
Trotta v. Valente, 2 Law Rec.....	11
Trotter, Boardman v. 17 C. P. R.....	284
Troy Chemical Co., People v. 39 C. P. R.....	100
Troy Printing and Bookbinding Co. v. New York Binding Co., 16 C. P. R.....	120
Troy Printing Co. v. Hart, 1 C. P. R.....	240

	Page
Troy Steel & Iron Co., State of N. Y. v. 24 C. P. R.	201
Trueb et al. v. N. Y. Asbestos Mfg. Co., 25 C. P. R.	347
Trumbridge v. Gans, 2 Law Rec.	71
Tuchband v. Chicago & Alton Railroad Co., 16 C. P. R.	241
Tuckband v. Chicago and Alton Railroad Co., 17 C. P. R.	424
Tuck v. Manning, 17 C. P. R.	175
Tucker, Fayerweather v. 18 C. P. R.	276
Tucker v. Gilman, 20 C. P. R.	397
Tucker, Gillman v. 21 C. P.	170
Tucker, Gilman v. 18 C. P. R.	50
Tucker, McEntyre v. 23 C. P. R.	171
Tucker, McIntyre v. 29 C. P. R.	185
Tucker, McEntyre v. 3 Law Rec.	69
Tucker, People ex rel. Cattle v. 16 C. P. R.	126
Tucker v. Tradesmens Bank, 2 Law Rec.	58
Tunnicliff, People v. 17 C. P. R.	381
Turck v. Chisholm, 39 C. P. R.	1
Turell, Matter of, 32 C. P. R.	33
Turnbull, Hassler v. 10 C. P. R.	240
Turnbull, In re, 1 Law Rec.	153
Turner v. Conant, 10 C. P. R.	192
Tutthill, Oakley v. 7 C. P. R.	339
Tuttle, Childs v. 15 C. P. R.	182
Turtle v. Turtle, 27 C. P. R.	289
Tweedie Trading Co., Matter of, 35 C. P. R.	6
Tweedy v. United Life Ins. Ass., 24 C. P. R.	259
Twenty-third St. Ry. Co., Kennedy v. 38 C. P. R.	240
Twigg, Fiske v. 5 C. P. R.	41
Tyler v. Ballard, 31 C. P. R.	63
Tyler v. Standard Wine Co., 38 C. P. R.	105
Tynan v. Auto Mart, 39 C. P. R.	17
Tynan v. Cadenas, 7 C. P. R.	305
Tyndall, Matter of, 38 C. P. R.	283

U

	Page
Ubart v. Baltimore & O. R. Co., 38 C. P. R.....	367
Uhl v. Loughran, 14 C. P. R.....	344
Uhl v. Loughran, 16 C. P. R.....	386
Underhill, McGown v. 38 C. P. R.....	116
Underhill, McGowan v. 37 C. P. R.....	274
Underhill v. Underhill, 25 C. P. R.....	374
Underwood, Farmers National Bank of Anapolis v. 25 C. P. R.....	95
Underhill v. Manhattan R. R. Co., 21 C. P. R..	441
Underwood, Pratt v. 4 C. P. R.....	167
Union Dime Savings Institution, Dubois v. 25 C. P. R.....	288
Union Distilling Co., Ruser v. 21 C. P. R.....	293
Union Ferry Co., Grafton v. 20 C. P. R.....	238
Union Ferry Co., Grafton v. 22 C. P. R.....	402
Union Insurance Co. v. Central Trust Co., 24 C. P. R.....	219
Union Insurance Co. v. Central Trust Co., 29 C. P. R.....	1
Union Insurance Co., People ex rel. v. Nash, 16 C. P. R.....	83
Union Pacific R. R., Barnes v. 3 Law Rec.....	31
Union Pacific R. R., Francis v. 3 Law Rec.....	31
Union Paper Box Co., Beal v. 4 C. P. R.....	18
Union Trust Co., People ex rel, v. Nash, 13 C. P. R.....	301
Union Trust Co. v. Schliep, 23 C. P. R.....	264
United Bank of O. v. Zeisler, 3 Law Rec.....	65
United Life & Accident Ins. Co., Petten v. 22 C. P. R.....	247
United Life Ins. Ass., Tweedy v. 24 C. P. R....	259
United Lines Telegraph Co., Farmers Loan & Trust Co. v. 14 C. P. R.....	187
United States of America v. Louis Lee, 32 C. P. R.....	1
United States & Brazil S. S. Co., Gorton v. 20 C. P. R.....	202

	Page
United States Electric Lighting Co., Freeman v. 20 C. P. R.....	177
United States Land and Investment Co. v. Bussey, 17 C. P. R.....	165
United States Law Blank Co., People v. 27 C. P. R.	351
United States Mortgage & Trust Co., Boyd v. 38 C. P. R.....	1
United States Mortgage & Trust Co. v. Hodgson, 29 C. P. R.....	338
United States Reflector Co., In re, 8 C. P. R....	120
United States Reflector Co., Bowe v. 4 C. P. R..	154
United States Reflector Co., Bowe v. 8 C. P. R..	33
United States Reflector Co., Hall v. 4 C. P. R...	148
United States v. Reid, 4 C. P. R.....	1
United States Pipe Line Co., Stanton v. 25 C. P. R.	180
United States Trust Co., Matter of, 38 C. P. R..	30
United States Trust Co. v. N. Y., W. S. & B. R. Co., 6 C. P. R.....	90
United States Trust Co. v. N. Y., W. S. & B. R. Co., 9 C. P. R.....	113
Untermeyer v. City of Yonkers, 39 C. P. R.....	261
Unterstützungs Verein v. Wall, 29 C. P. R....	376
Updyke, In re, 24 C. P. R.....	40
Updyke, People ex rel. v. Gillon, 18 C. P. R....	109
Upham v. Cohen, 14 C. P. R.....	27
Uptegrove, Cullen v. 34 C. P. R.....	181
Uriarte, Castro v. 2 C. P. R.....	10
Utter v. McLean, 17 C. P. R.....	150
Ury, Israel v. 38 C. P. R.....	415
Ury v. White, 15 C. P. R.....	451

V

Vale v. Brooklyn Crosstown R. R. Co., 12 C. P. R.	102
Vail, Tilton v. 17 C. P. R.....	194

	Page
Vail v. Vail, 17 C. P. R.....	38
Valiente v. Bryan, 3 C. P. R.....	358
Valente, Trotta v. 2 Law Rec.....	11
Valentine v. Buttell, 1 Law Rec.....	76
Valentine, Estate of, 1 Law Rec.....	259
Valentine, Foote v. 14 C. P. R.....	332
Valentine v. Kelly, 17 C. P. R.....	367
Valentine, Knapp v. 24 C. P. R.....	331
Valentine, Kerwin v. 13 C. P. R.....	334
Valentine v. Knickerbocker S. Co., 3 Law Rec..	43
Valentine v. Mandel, 19 C. P. R.....	155
Valentine v. Richardt, 17 C. P. R.....	289
Van Aken v. Tice, 2 Law Rec.....	142
Van Allen v. Glass, 21 C. P. R.....	127
Van Allen, Putnam v. 13 C. P. R.....	246
Van Arsdale v. King, 27 C. P. R.....	181
Van Au, Goetz v. 12 C. P. R.....	104
Van Benthuyssen v. Van Benthuyssen, 15 C. P. R.	234
Van Bremsen, Flatow v. 20 C. P. R.....	150
Van Brunt, Jenks v. 6 C. P. R.....	158
Van Brunt St. & Erie Basin R. R. Co., Abrams v. 13 C. P. R.....	402
Van Buren v. Lazarus, 2 Law Rec.....	8
Van Buren v. Lazarus, 1 Law Rec.....	100
Van Camp v. Searle, 24 C. P. R.....	16
Van Cise v. Peterman, 35 C. P. R.....	81
Vanderveere, Dalton v. 23 C. P. R.....	443
Vanderveer v. Warren, 11 C. P. R.....	319
Vandervoort, Matter of, 19 C. P. R.....	355
Vanderzee v. Hallenbeck, 14 C. P. R.....	99
Van Dolsen v. Abendroth, 8 C. P. R.....	87
Van Etten, Landon v. 18 C. P. R.....	127
Van Etten, Langdon v. 19 C. P. R.....	78
Van Gelder v. Hallenback, 15 C. P. R.....	333
Van Hatten v. Scholl, 25 C. P. R.....	247
Van Inwegan, Rundle v. 9 C. P. R.....	328
Van Kirk, Shradv v. 33 C. P. R.....	168

	Page
Van Nest Land Co. v. N. Y. Water Co., 1 Law Rec.	220
Vanorden, Albert Palmer Co. v. 4 C. P. R.	44
Van Rensselaer, Garland v. 23 C. P. R.	208
Van Schaick, Koster v. 2 C. P. R.	336
Van Sinderen v. Lawrence, 14 C. P. R.	64
Van Slyck v. Ingersoll, 13 C. P. R.	48
Van Tassel, Didsbury v. 18 C. P. R.	372
Van Voast v. Cushing, 28 C. P. R.	4
Van Wagenen, Randall v. 17 C. P. R.	403
Van Zant v. Van Zant, 17 C. P. R.	448
Varnum v. Wheeler, 9 C. P. R.	421
Vath v. Vath, 2 Law Rec.	211
Vaughn v. Lego, 15 C. P. R.	164
Vaughan v. Workingmens Co.-op. U. Ins. Co., 1 Law Rec.	112
Vedder, Goff v. 12 C. P. R.	358
Velie v. Newark City Ins. Co., 3 C. P. R.	202
Venable v. Harlin, 1 C. P. R.	215
Verdenhalven, Oliwell v. 17 C. P. R.	362
Vereinigte Pinselfabricken v. Rogers, 31 C. P. R.	37
Vernon v. Palmer, 5 C. P. R.	233
Ver Nooy, Benjamin v. 29 C. P. R.	120
Verra v. Constantino v. 33 C. P. R.	189
Very's Estate, In re, 28 C. P. R.	163
Viadero v. Morton, 6 C. P. R.	238
Vibbard, McCulloch v. 14 C. P. R.	388
Victor v. Richards Co., 26 C. P. R.	29
Vidal v. Reilly, 1 Law Rec.	37
Vietor v. Goodman, 29 C. P. R.	263
Vietor v. Henlein, 7 C. P. R.	67
Vilas v. Chase, 19 C. P. R.	333
Village of Fulton, People ex rel. v. Supervisors of Oswego, 15 C. P. R.	379
Village of Hammondsport, Ayres v. 13 C. P. R.	236
Virgil v. Newmark, 2 Law Rec.	47
Village of Mt. Vernon, Hufnagel v. 15 C. P. R.	148
Village of Oneida, Nelson v. 27 C. P. R.	283

	Page
Village of Palmyra v. Wynkoop, 17 C. P. R.	187
Vinal, Continental Construction & Improvement Co. v. 14 C. P. R.	293
Voger v. Kirby, 15 C. P. R.	332
Vogel, Schuster v. 23 C. P. R.	256, 351
Von Bremson, Flatow v. 19 C. P. R.	121, 125, 131
Von Hagen v. Waterbury Manufacturing Co., 27 C. P. R.	148
Von Hess v. Morton, 16 C. P. R.	333
Voisin v. Commercial Mut. Ins. Co., 19 C. P. R.	220
Voorhies v. Cummings, 29 C. P. R.	378
Voorhis, Estate of, 5 C. P. R.	444
Vroom v. Palmer, 1 Law Rec.	89
Vrooman v. Pickering, 28 C. P. R.	302

W

Wabash Railway Co., Stearn v. 37 C. P. R.	380
Wabberson v. Wabberson, 29 C. P. R.	227
Waddell, Williams v. 5 C. P. R.	191
Wadhams, Carney v. 9 C. P. R.	204
Wadsworth, Stahl v. 13 C. P. R.	32
Wagner, Gallagher v. 2 Law Rec.	47
Wainwright v. Tiffany, 13 C. P. R.	222
Wait v. Getman, 28 C. P. R.	49
Wait, Spencer v. 9 C. P. R.	93
Waiter, Quin v. 18 C. P. R.	122
Walbrau, McAdam v. 8 C. P. R.	451
Walden v. Frost, 7 C. P. R.	242
Walker, Bradley v. 22 C. P. R.	1
Walker, Budd v. 3 C. P. R.	422
Walker v. Scott, 23 C. P. R.	9
Wall, Caldwell v. 11 C. P. R.	67
Wall, Unterstuetzungs Verein v. 29 C. P. R.	376
Wallace v. Berdwell, 8 C. P. R.	363

	Page
Wallace v. Blake, 16 C. P. R.....	384
Wallace, Casper v. 5 C. P. R.....	361
Wallace v. Feeley, 1 C. P. R.....	126
Wallace, People ex rel. v. Abbott, 13 C. P. R.	101, 161
Wallach, Seligman v. 6 C. P. R.....	232
Wallenstein, Dannhauser v. 32 C. P. R.....	276
Wallis Iron Works, Ringle v. 25 C. P. R.....	261
Walsh v. Bowery Savings Bank, 9 C. P. R.....	177
Walsh v. Bowery Savings Bank, 10 C. P. R.....	32
Walsh, Hanson v. 38 C. P. R.....	60
Walsh, Lynch v. 11 C. P. R.....	446
Walsh, People ex rel. Mooney v. 15 C. P. R.....	19
Walsh v. Schulz, 5 C. P. R.....	357
Walsh v. Schultz, 6 C. P. R.....	126
Walsh v. Schulz, 7 C. P. R.....	209
Walters, Blanc v. 2 Law Rec.....	172
Walter v. McAllister Co., 27 C. P. R.....	33
Walters, People ex rel. Martin v. 7 C. P. R.....	406
Walters, Stoker v. 38 C. P. R.....	511
Walz v. Rousseau, 1 Law Rec.....	64
Waltz v. Utica & M. V. R. R. Co., 38 C. P. R.....	87
Wamsley v. R. L. Norton Co., 1 Law Rec.....	167
Wanamaker v. Megraw, 32 C. P. R.....	201
Warber v. Rosenstein, 1 Law Rec.....	102
Ward, Fraser v. 9 C. P. R.....	11
Ward v. Gillies, 19 C. P. R.....	40
Ward v. Littlejohn, 17 C. P. R.....	178
Ward, Suyer v. 3 Law Rec.....	190
Ward T. E. & Co., Squer v. 3 Law Rec.....	9
Ward v. Ward, 23 C. P. R.....	61
Warden of City Prison, People ex rel. Weick v. 38 C. P. R.....	97
Warmser, Leer v. 38 C. P. R.....	340
Warner v. Fourth National Bank, 12 C. P. R...	187
Warren, Sargent v. 11 C. P. R.....	160
Warren, Vanderveer v. 11 C. P. R.....	319
Warring v. Keeler, 24 C. P. R.....	427

	Page
Warshauer, Martin Cantine Co. v. 23 C. P. R..	379
Warshauer v. Webb, 10 C. P. R.....	169
Warwick, Town of, Ten Eyck v. 24 C. P. R....	6
Warth v. Kastriner, 37 C. P. R.....	209
Washburn, Carrigan v. 14 C. P. R.....	350
Washburn, Carrigan v. 18 C. P. R.....	77, 79
Washburn v. Mott, 19 C. P. R.....	439
Washington Brewery Co., 1 Law Rec.....	211
Washington Life Insurance v. Scott, 39 C. P. R.	206
Wassenger v. Fennell, 13 C. P. R.....	286
Wasson v. Hoff, 30 C. P. R.....	89
Waterbury Manufacturing Co., Von Hagan v. 27 C. P. R.....	148
Watson, Executor, Matter of, 34 C. P. R.....	150
Watson v. Benz, 19 C. P. R.....	172
Watson v. Bartens, 1 Law Rec.....	59
Watson & Bartholow, Bennett v. 26 C. P. R....	128
Watson, Conner v. 29 C. P. R.....	153
Watson, N. Y. W. S. & B. R. R. Co., v. 38 C. P. R.	470
Watson v. Phyfe, 11 C. P. R.....	442
Watson v. Phyfe, 12 C. P. R.....	172
Watters, Carroll v. 10 C. P. R.....	6
Watts v. Wilcox, 20 C. P. R.....	164
Watts v. Wilcox, 23 C. P. R.....	69 note
Wauful, Saval v. 21 C. P. R.....	18
Weaver v. N. Y. Elevated R. R., 1 Law Rec....	89
Weaver, Link v. 21 C. P. R.....	284
Weaver, Miller v. 3 Law Rec.....	4
Weaver, Queen v. 32 C. P. R.....	60
Webb, Cooper v. 2 Law Rec.....	133
Webb v. Milne, 10 C. P. R.....	27
Webb, Stevens v. 4 C. P. R.....	64
Webb, Warshauer v. 10 C. P. R.....	169
Weber v. Manne, 11 C. P. R.....	64
Weber, In re, Rathburn v. 13 C. P. R.....	50
Webber, Hodges v. 32 C. P. R.....	208
Webster, Purdy v. 9 C. P. R.....	144

	Page
Wechler, Schwartz v. 23 C. P. R.....	21
Weed v. Paine, 4 C. P. R.....	305
Week v. Keteltas, 10 C. P. R.....	43
Weeks v. Cornwell, 9 C. P. R.....	28
Weeks, Estate of, 1 C. P. R.....	164
Weeks, Health Department v. 27 C. P. R.....	37
Weeks v. O'Brien, 27 C. P. R.....	86
Weeks v. Silver Islet Consolidated Mining & Land Co., 19 C. P. R.....	87
Weightman v. Catlin, 37 C. P. R.....	105
Weil v. California Safe Deposit Co., 2 Law Rec.	89
Weil, Kaliske v. 24 C. P. R.....	248
Weil v. Kempf, 12 C. P. R.....	379
Weil v. Martin, 1 C. P. R.....	133
Weil v. Metropolitan R. R. Co., 24 C. P. R.....	85
Weil, Stuyvesant v. 29 C. P. R.....	319
Weil, Stuyvesant v. 32 C. P. R.....	127
Weill v. Blanner, 1 Law Rec.....	114
Weill, McGill v. 19 C. P. R.....	43
Weill v. Weill, 18 C. P. R.....	241
Weiler v. Nembach, 13 C. P. R.....	380
Weiler v. Nembach, 16 C. P. R.....	375
Weinman, Drake v. 24 C. P. R.....	323
Weinstock v. Levison, 20 C. P. R.....	1
Weiss v. Ashman, 24 C. P. R.....	268
Weiss v. Morrell, 23 C. P. R.....	352
Weissenthanner, Fuede v. 29 C. P. R.....	187
Weitkamp v. Loehr, 3 C. P. R.....	36
Welch v. Platt, 5 C. P. R.....	433
Welde v. Henderson, 10 C. P. R.....	214
Welling, Estate of, 7 C. P. R.....	92
Wells v. Knox, 17 C. P. R.....	59
Wells v. Knox, 18 C. P. R.....	87
Wells v. National City Bank, 29 C. P. R....	158, 193
Wells v. Preston, 37 C. P. R.....	165
Welsh, Harrisburg Pipe Bending Co. v. 27 C. P. R.	238
Weltman v. Posnecker, 26 C. P. R.....	238

	Page
Welz v. Antinozze, 1 Law Rec.....	196
Wemple Co. v. Cunningham, 2 Law Rec.....	10
Wendell, Attleboro National Bank v. 22 C. P. R.	225
Wendell v. Lipsky, 8 C. P. R.....	388
Wenzell v. Morrissey, 15 C. P. R.....	311
Werbolowsky v. Greenwich Ins. Co., 5 C. P. R.	303
Werckman v. Werckman, 4 C. P. R.....	146
Werner v. Franklin National Bank, 29 C. P. R.	272
Werner, Schram v. 24 C. P. R.....	161
Wertheim v. Continental Railway and Trust Co., 3 C. P. R.....	371
Wertheimer, Freyhan v. 38 C. P. R.....	426
West End Co., B. & L. Assn. v. Schram, 1 Law Rec.	117
West v. Kurtz, 15 C. P. R.....	424
West Shore Traction Co., Bauer v. 39 C. P. R..	258
West Side Bank v. Foehrenbach, 29 C. P. R....	383
Westbrook, People ex rel. Adams v. 2 C. P. R..	186
Westcott, Harnett v. 14 C. P. R.....	360
Western National Bank v. Bull, 1 Law Rec....	41
Western Union Tel. Co., Williams v. 1 C. P. R.	194, 294
Western Union Telegraph Co., Williams v. 3 C. P. R.	448
Westervliet Turnpike Co., Hudson River Tele- phone Co. v. 21 C. P. R.....	204
Westmayer, Flynn v. 14 C. P. R.....	130
Weston, Hoag v. 10 C. P. R.....	92
Weston, Smith v. 24 C. P. R.....	141
Weston, Stoddard v. 22 C. P. R.....	51
Westray, Lippincott v. 6 C. P. R.....	74
Whaley, Inderlied v. 17 C. P. R.....	377
Whaley, Shepard v. 19 C. P. R.....	381
Wharton, Allen v. 20 C. P. R.....	121
Wheeler v. Broderick, 1 Law Rec.....	88
Wheeler, Swift v. 13 C. P. R.....	343
Wheeler, Terrill v. 13 C. P. R.....	178

	Page
Wheeler, Varnum v. 9 C. P. R.....	421
Whelan, Estate of, 15 C. P. R.....	273
Whelpley, Loder v. 16 C. P. R.....	89
White, Brainerd v. 7 C. P. R.....	43
White, Buckingham v. 1 C. P. R.....	365
Whiting, Cuming v. 12 C. P. R.....	443
White, Gastro v. 17 C. P. R.....	46
White v. Goodson Type Casting & Setting Machine Co., 24 C. P. R.....	411
White v. Kane, 7 C. P. R.....	267
White, Kopp v. 30 C. P. R.....	352
White, People ex rel. v. Loomis, 2 C. P. R.....	278
White v. Rintoul, 6 C. P. R.....	259
White, Stokes & Allen, Caxton Book-Binding Co. v. 10 C. P. R.....	146
White v. Wood, 15 C. P. R.....	187
White's Bank of Buffalo v. Farthing, 9 C. P. R.	64
Whitenack, Guliano v. 24 C. P. R.....	55
Whitfield v. Broadway & Seventh Ave. R. R. Co., 19 C. P. R.....	105
Whithers v. Toulmin, 13 C. P. R.....	1
Whitlock, In re, 15 C. P. R.....	204
Whitman v. Curtis, 2 Law Rec.....	65
Whitman v. James, 1 C. P. R.....	235
Whitman v. Johnson, 24 C. P. R.....	350
Whitman, Rothschild v. 19 C. P. R.....	58
Whitmarsh, Thompson v. 8 C. P. R.....	183
Whitney v. Hirsch, 9 C. P. R.....	249
Whitney v. N. Y. & Atlantic R. R. Co., 5 C. P. R.	118
Whitney, People ex rel. McLane v. 27 C. P. R..	150
Whitney v. Saxe, 15 C. P. R.....	50
Whitney v. Whitney, 19 C. P. R.....	265
Whiton v. Morning Journal Ass., 3 Law Rec...	76
Whiton v. Morning Journal Association, 27 C. P. R.	224
Wichman v. Aschpurvis, 14 C. P. R.....	88
Wickham v. Roberts, 37 C. P. R.....	102
Wickham v. Stern, 18 C. P. R.....	63

	Page
Wiederman, Cullen v. 2 Law Rec.....	96
Wiegand v. Wiegand, 34 C. P. R.....	186
Wigg, Ross v. 6 C. P. R.....	263, 268
Wigg, Ross v. 8 C. P. R.....	272
Wiggins, Arkenburg v. 26 C. P. R.....	214
Wiggins v. King, 1 Law Rec.....	62
Wiggins, Perine v. 18 C. P. R.....	172
Wigham, Newell v. 9 C. P. R.....	361
Wilcox v. Dodge, 17 C. P. R.....	248
Wilcox v. Howe, 20 C. P. R.....	214
Wilcox, Pitkin v. 20 C. P. R.....	27
Wilcox Silver Plate Co. v. Barclay, 14 C. P. R..	211
Wilcox, Watts v. 20 C. P. R.....	164
Wilcox, Watts v. 23 C. P. R.....	69 note
Wilcox v. Wilcox, 38 C. P. R.....	168
Wilde, Ury v. 15 C. P. R.....	451
Wildman v. Gelder, 21 C. P. R.....	143
Wildrick v. De Vinney, 38 C. P. R.....	186
Wileman, Willis v. 38 C. P. R.....	497
Wiles, Crossitt v. 13 C. P. R.....	327
Wiley, Northampton Nat'l Bank v. 16 C. P. R..	326
Wilkins v. Williams, 15 C. P. R.....	168
Wilkinson, Bryan v. 15 C. P. R.....	74
Wilkinson, Bryan v. 16 C. P. R.....	279
Wilkinson, Lacy v. 7 C. P. R.....	104
Wilkinson, Polley v. 5 C. P. R.....	135
Willard, People ex rel. Wright v. 15 C. P. R....	400
Williard v. Strachan, 3 C. P. R.....	452
Willett, Estate of, 15 C. P. R.....	284, 290
William Peter Brewing Co. v. Raymond, 1 Law Rec.	239
Williams, Carrie, accounting of, 30 C. P. R....	77
Williams v. Colwell, 26 C. P. R.....	66
Williams v. Davis, 7 C. P. R.....	282
Williams, Davies v. 13 C. P. R.....	138
Williams, Estate of, 15 C. P. R.....	271
Williams, Farmers National Bank of Rome v. 9 C. P. R.....	212

	Page
Williams v. Freeman, 12 C. P. R.....	334
Williams v. Foster, 16 C. P. R.....	429
Williams, Grout v. 34 C. P. R.....	231
Williams v. Hays, 17 C. P. R.....	97
Williams, In re, 28 C. P. R.....	79
Williams, Matter of, 38 C. P. R.....	38
Williams, Spuyten Duyvil, etc., Co. v. 1 C. P. R.	280
Williams v. Waddell, 5 C. P. R.....	191
Williams v. W. U. Tel. Co., 1 C. P. R.....	194, 294
Williams v. Western Union Telegraph Co., 3 C. P. R.	448
Williams, Wilkins v. 15 C. P. R.....	168
Williams v. Williams, 17 C. P. R.....	297
Williamson v. Williamson, 3 C. P. R.....	69
Willis v. Brennen, 1 Law Rec.....	201
Willis, Meigs v. 5 C. P. R.....	106
Willis, Meiggs v. 8 C. P. R.....	125
Willis v. Metropolitan Street R. R. Co., 33 C. P. R.	190
Willis v. Rowland & Co., 38 C. P. R.....	383
Willis v. Wileman, 38 C. P. R.....	497
Willmore v. Flack, 6 C. P. R.....	191
Wilmyk v. Second Ave. R. R., 1 Law Rec.....	107
Willoughby v. Bank of Met., 1 Law Rec.....	116
Willover v. First Nat. Bank of Olean, 10 C. P. R.	10
Wills v. Pennel, 38 C. P. R.....	27
Wilshire v. Manning, 22 C. P. R.....	94
Wilson v. Bennett, 2 C. P. R.....	34
Wilson Bros. Woodenware & Toy Co. v. Daggett, 9 C. P. R.....	408
Wilson v. Collins, 39 C. P. R.....	91
Wilson v. Dawson, 13 C. P. R.....	142
Wilson, Deutermann v. 15 C. P. R.....	411
Wilson v. Doran, 15 C. P. R.....	96
Wilson, Dorlan v. 9 C. P. R.....	69
Wilson v. Eastman & Mandeville Co., 18 C. P. R.	267
Wilson, Estate of, 2 Law Rec.....	124

	Page
Wilson v. Greig, In re, 2 C. P. R.....	343
Wilson, Krafft v. 8 C. P. R.....	359
Wilson v. McGregor, 20 C. P. R.....	36
Wiltshire v. Manning, 17 C. P. R.....	175
Wilson v. Munoz, 6 C. P. R.....	71
Wilson, Peace v. 37 C. P. R.....	287
Wilson, Peace v. 38 C. P. R.....	386
Wilson, Pennefether v. 2 Law Rec.....	61
Wilson, Rothschild v. 19 C. P. R.....	76
Wilson v. Ryder, 13 C. P. R.....	69
Wilson, Seiler v. 12 C. P. R.....	267
Wilson, Shenstone v. 38 C. P. R.....	132
Wilson v. Smith, 20 C. P. R.....	235
Winans, Moore v. 2 Law Rec.....	153
Winans, People ex rel. v. Adams, 20 C. P. R....	195
Winans, People ex rel v. Adams, 21 C. P. R....	159
Winant v. Urnter, 1 Law Rec.....	245
Winchester v. Brown, 19 C. P. R.....	68
Wing, Fish v. 1 C. P. R.....	231
Wing, Taylor v. 1 C. P. R.....	43
Wingert v. Krakauer, 34 C. P. R.....	146
Wings v. De la Rionda, 20 C. P. R.....	183
Winn, Harrington v. 20 C. P. R.....	328
Winnington, Estate of, 1 C. P. R.....	267
Winqvist v. Preston, 39 C. P. R.....	263
Winslow v. Staten Island Rapid Transit Co., 15 C. P. R.....	202
Winston v. Winston, 31 C. P. R.....	382
Winter v. Hamm, 5 C. P. R.....	194
Wintermeyer v. Sherwood, 23 C. P. R.....	422
Winters, Bliss v. 29 C. P. R.....	271
Winterson v. Hitchings, 25 C. P. R.....	1
Winton v. Livey, 16 C. P. R.....	348
Winton v. Winton, 16 C. P. R.....	337
Winton v. Winton, 18 C. P. R.....	67
Wise v. Cohen, 37 C. P. R.....	152
Witcher v. Tribune Association, 20 C. P. R....	283
Withers, Estate of, 2 C. P. R.....	162

	Page
Withington, Platt v. 19 C. P. R.....	387
Withman v. Rosenicher, 1 Law Rec.....	236
Wodiska v. Cohen, 1 Law Rec.....	238
Woek, Hebron v. 34 C. P. R.....	134
Woelfle v. Schmenger, 12 C. P. R.....	24, 312
Woerishoffer v. North River Construction Co., 6 C. P. R.....	113
Wohltman v. Goff, 15 C. P. R.....	39
Wokal v. Belsky, 31 C. P. R.....	130
Wolf, Yardum v. 3 Law Rec.....	183
Wolf, People State New York v. 35 C. P. R....	122
Wolff, Hendricks v. 14 C. P. R.....	426
Wolff v. Houston, West St. and Pavonia R. . Co., 16 C. P. R.....	107
Wolfraath, Greferman v. 28 C. P. R.....	55
Wolfsohn, Tew v. 33 C. P. R.....	278, 382
Wollung v. Aiken, 17 C. P. R.....	318
Wood, Anthony v. 6 C. P. R.....	164
Wood, Apsley v. 6 C. P. R.....	178
Wood v. Blodgett, 15 C. P. R.....	114
Wood v. Gledhill, 20 C. P. R.....	155
Wood v. Hogan, 1 Law Rec.....	186
Wood, Kennedy v. 17 C. P. R.....	375
Woods v. Kernan, 19 C. P. R.....	180
Wood v. Larry, 20 C. P. R.....	136
Wood, Matter of, 34 C. P. R.....	127
Wood Co., Merriam v. 2 Law Rec.....	74
Wood, Miller v. 18 C. P. R.....	6
Wood v. Mitchell, 17 C. P. R.....	346
Wood & Parker Lithographic Co., Merriam v. 27 C. P. R.....	178
Wood v. Raydure, 9 C. P. R.....	96
Wood v. St. Louis, etc., Co., 1 C. P. R.....	220
Wood, Selkirk v. 9 C. P. R.....	141
Wood, White v. 15 C. P. R.....	187
Woodard v. Holland Medicine Co., 22 C. P. R..	23
Woodbury Dermatological Institute, Conklin v. 29 C. P. R.....	42

	Page
Woodbury Dermatological Inst., Patterson v. 38	
C. P. R.....	433
Woodbury, McDonald v. 3 C. P. R.....	387
Woodford v. Chapman, 6 C. P. R.....	315
Woodford v. Rasback, 6 C. P. R.....	315
Woodhead, Miller v. 17 C. P. R.....	102
Woodward, Ludlow v. 39 C. P. R.....	26
Wooley, Ferguson v. 9 C. P. R.....	236
Woolf v. Rogers, 3 Law Rec.....	148
Woolsey, Ellsworth v. 26 C. P. R.....	339
Woolworth, Merrill & Baker v. 39 C. P. R.....	108
Wooster, Brewster v. 24 C. P. R.....	83
Wooten v. Christie, 1 Law Rec.....	209
Woonsocket Rubber Co. v. Rubber Clothing Co.,	
1 C. P. R.....	350
Work, Fraser v. 3 Law Rec	57
Wormser, Cornish v. 17 C. P. R.....	282
Worthington v. London Guarantee and Accident	
Co., 31 C. P. R.....	274
Wray, Feig v. 3 C. P. R.....	159
Wright, Butler v. 37 C. P. R.....	253
Wright, People ex rel. v. Willard, 15 C. P. R....	400
Wright v. Philip Hake Mfg. Co., 1 Law Rec....	105
Wright, Taylor v. 28 C. P. R.....	108
Wright v. Zimmerman, 2 Law Rec.....	191
Wunnenberg v. Gearty, 7 C. P. R.....	393
Wurster v. Armfield, 34 C. P. R.....	167
Wurster, People ex rel. Phillips & Miller, resp.,	
v. 25 C. P. R.....	367
Wurtz, Imhoff v. 9 C. P. R.....	49
Wustenberg v. Dunn, 2 Law Rec.....	1
Wyckoff v. Andrews, 5 C. P. R.....	410
Wykoff, Bergen v. 1 C. P. R.....	1
Wyckoff v. Devlin, 8 C. P. R.....	138
Wykoff v. Smith, 1 Law Rec.....	14
Wynkoop v. Myers, 17 C. P. R.....	443
Wynkoop, Village of Palmyra v. 17 C. P. R....	187
Wynne, McIntyre v. 21 C. P. R.....	208

Y

	Page
Yager, Mulford v. 17 C. P. R.....	371
Yardum v. Wolf, 3 Law Rec.....	183
Yates County Nat'l Bank v. Carpenter, 14 C. P. R.	372
York, Gilbert v. 12 C. P. R.....	345
York, Estate of, 6 C. P. R.....	245
Yorkville Bank v. Zeltner Brewing Co., 33 C. P. R.	348
Yorston, Barrie v. 28 C. P. R.....	253
Yost, Teal v. 16 C. P. R.....	367
Yonkers, City of, Untermeyer v. 39 C. P. R.....	261
Young v. Fox, 27 C. P. R.....	253
Young v. Gregg, 9 C. P. R.....	262
Young, Jacot v. 2 Law Rec.....	13
Young, Matter of, 27 C. P. R.....	199
Young, Mead v. 8 C. P. R.....	414
Young v. Thulenberg, 31 C. P. R.....	368
Younger v. Duffie, 5 C. P. R.....	84
Yung, Moench v. 18 C. P. R.....	259
Yuelin v. Meade, 1 C. P. R.....	446

Z

Zacharias v. French, 24 C. P. R.....	88
Zaht, Estate of, 2 C. P. R.....	212
Zarinsky, Goldenberg v. 37 C. P. R.....	203
Zeigler v. Trenkman, 1 Law Rec.....	109
Zeigler, United Bank of C. v. 3 Law Rec.....	65
Zeit, an Infant, v. Snyder, 1 Law Rec.....	130
Zeitz, In re, 12 C. P. R.....	423
Zelmanovitz v. Manhattan R. R. Co., 24 C. P. R.	402
Zeltner Brewing Co., Yorkville Bank v. 33 C. P. R.	348

	Page
Zeltner Brewing Co. v. Zeltner, 33 C. P. R. 298, 357	
Zeltner, Jacobs v. 24 C. P. R.	45
Zeltner v. Zeltner Brewing Co., 33 C. P. R. 298, 357	
Zimmerman v. Fischer, 13 C. P. R.	224
Zimmerman v. Robinson, 1 Law Rec.	226
Zimmerman, Wright v. 2 Law Rec.	191
Zivi v. Nelke, 23 C. P. R.	57
Zoeller v. Riley, 7 C. P. R.	391
Zust v. Smitheimer, 19 C. P. R.	370

General Index

AND

Index To Annotation

CONTAINED IN

New York Civil Procedure Reports

VOLUMES 37, 38, 39

AND

New York Law Record

3 VOLUMES



GENERAL INDEX

A

	Page
ABATEMENT. Lot owners may join in one action for abatement of nuisance, 39 C. P. R.	201
ABATEMENT AND SURVIVAL. See actions, 38 C. P. R.	444
ACCIDENT. See Personal Injuries, 2 Law Rec.	125
ACCOUNT. Judicial Settlement, 1 Law Rec...	21
—Items of, 1 Law Rec.	26
—Judicial Settlement of; deduction from legacy, 3 Law Rec.	175
—Judicial settlement of, Commissions of executors, 3 Law Rec.	186
—Stated, 1 Law Rec.	215
—In action upon an account stated. Necessary averments, 3 Law Rec.	9
ACCOUNTING. See Executor and Administrator.	
—By Trustees. See Trustee, 37 C. P. R.	9
—Action for, 1 Law Rec.	126, 223
—Of executors, 1 Law Rec.	20
—Of deceased co-executor, 1 Law Rec....	21
—Final, 1 Law Rec.	18
—Denial of claim, 1 Law Rec.	81
—Of executor, disputed claim, 1 Law Rec.	81
—Intermediate, 1 Law Rec.	21, 82
—Receiver, 1 Law Rec.	192
—Compulsory, 3 Law Rec.	220

	Page
—Of assignee. See Assignee.	
—Voluntary, is confined to such property of the estate as has come into the hands of the deceased executor or administrator, 3 Law Rec.	40
 ACT, completed before stay, may not be invalidated, 2 Law Rec.	131
 ACTION FOR PERSONAL INJURY. See Witness, 37 C. P. R.	51
 ACTION. An action will be dismissed for want of prosecution where plaintiff failed to bring it to trial for eleven years, and such delay is not excused by the attorney's stating that he thought that a settlement would be made, where it was shown that no attempt to compromise was ever made, 38 C. P. R.	323
—Complaint in action for personal injuries should be dismissed where case not placed on calendar for three years, 38 C. P. R.	140
—Court may determine which of two actions shall be tried first, 38 C. P. R.	105
—Error to dismiss action with costs where answer served two months after time to answer had expired, 38 C. P. R.	132
—Survival and abatement of conditions for unlawful detainer, assault and battery, and conversion, 38 C. P. R.	444
—Trial court held to be justified in refusing to postpone case, 38 C. P. R.	407
—Where a complaint sets out an action for conversion, a counterclaim may not be litigated, 39 C. P. R.	243

	Page
—To redeem after foreclosure, 1 Law Rec.	231
—Legal or equitable, 1 Law Rec.	16
—Against municipality, notice must be sufficient, condition precedent, 2 Law Rec...	205
—By vendee to annul contract for real estate, 2 Law Rec.	61
—For separation—Counsel fees and alimony pendente lite will not be allowed to wife where there is no probability or reasonable certainty that she will be successful, 2 Law Rec.	129
—For wages, 2 Law Rec.	16
—To compel transfer of stock—when, 2 Law Rec.	30
—To vacate judgment, upon perjured evidence, 2 Law Rec.	14
—Upon judgment, 2 Law Rec.	43
—To recover balance of money deposited, 3 Law Rec.	58
—When pending when process has not been served, 3 Law Rec.	61
—By judgment creditor to set aside transfer of seat and membership in stock exchange, 3 Law Rec.	63
—Distinction between, brought in hostility to a trust and that in furtherance of a trust, 3 Law Rec.	63
—In hostility to trust, who are necessary parties, 3 Law Rec.	66
—To recover for a remote consequence of sale, 3 Law Rec.	80
—For debt secured by mortgage, cannot be maintained without leave of Court, 3 Law Rec.	92
—Causes of, improperly united, 3 Law Rec.	99
—Cannot be maintained under an expired execution, 3 Law Rec.	130

	Page
—Motion to revive, 3 Law Rec.	189
—Laches in, 3 Law Rec.	189
 ADOPTED CHILD, Inheritance, 1 Law Rec.	 79
 ADMINISTRATION. Of personal property, 1 Law Rec.	 19
—Letters of, who must present petition for. None granted to non-resident alien, 2 Law Rec.	 70
—Application to have letters issue to an- other not entitled to, 3 Law Rec.	 201
 ADMINISTRATOR. Temporary. Section 2678, 2 Law Rec.	 13
—When he may charge trust estate, 2 Law Rec.	 37
—Voluntary accounting of, by representa- tive of a deceased personal representative, 3 Rec.	 40
 ADVERSE POSSESSION. Deed held to be founded upon color of title, 38 C. P. R.	 48
—A mortgagor's assent to the mortgagee's possession is plainly inferable from a con- tinued possession by the latter, 39 C. P. R. ...	 150
—A finding that a mortgagee's possession is adverse, is supported by proof that the mortgagee occupied the premises as part of his farm for twenty years, 39 C. P. R.	 150
—Marketable Title, 1 Law Rec.	184, 187
—Encroachments, 1 Law Rec.	184

	Page
AFFIDAVIT. For Discovery, 1 Law Rec.	11
—Personal knowledge, 1 Law Rec.	194
—Of service of summons, 1 Law Rec.	12
—For examination of party before trial.	
Must state wherein the examination is ma-	
terial and necessary, 3 Law Rec.	30
—For examination of party before trial.	
Contents of, 3 Law Rec.	30
 AGENT. See Discovery, 2 Law Rec.	
 ALIENATION. Suspension of power of, con-	
strued, 2 Law Rec.	78
 ALIMONY. See Divorce, 38 C. P. R. "Husband	
and wife."	
—Arrears, 1 Law Rec.	7
—Motion to commit, 1 Law Rec.	6
—Inability to pay, 1 Law Rec.	6
—Laches, 1 Law Rec.	6
—Attachment against the person, 1 Law	
Rec.	6
—Abandonment by wife, 1 Law Rec.	32
—Subsequent marriage, 1 Law Rec.	64
—Common law wife, 1 Law Rec.	88
—Stay on appeal, 1 Law Rec.	156
—From husband's assignee, 1 Law Rec. ...	209
—Demand of, 1 Law Rec.	219
—Cruelty, non-support, 1 Law Rec.	224
—Service on attorney, 1 Law Rec.	225
—Pendente Lite, 1 Law Rec.	254
—And counsel fees, when not allowed in	
absolute divorce, 2 Law Rec.	134
—What must be shown to punish for, 2	
Law Rec.	33

	Page
—Pendente lite. See Action for Separation, 2 Law Rec.	
Pendente lite, when will not be granted, 3 Law Rec.	70
—May be granted after judgment although omitted from complaint, 3 Law Rec.....	108
—Counsel fees, wife's destitution, 3 Law Rec.	126
—In a motion for, when attorney's authority ends, 3 Law Rec.	132
—Payment of, mitigates contempt for failure to give bond, 3 Law Rec.....	191
—Cannot be granted in a judgment annulling marriage, 3 Law Rec.	204
 ALLOWANCE in divorce cases, 1 Law Rec.....	 40
—Trial by referee, 1 Law Rec.	127
—Extra oral motion for, 1 Law Rec.....	165
—Extra order in judgment, 1 Law Rec... ..	165
 AMENDMENT. Of complaint, 1 Law Rec.	 233
—Of pleading of cause, 1 Law Rec.....	163
—After judgment, 1 Law Rec.	29, 258
 —See PLEADING, 37 C. P. R.....	
—Of Pleadings, see Pleading, 38 C. P. R.	
—Service of answer changes date of issue, 2 Law Rec.....	47
—Pleading. Sets up something not in original, 2 Law Rec.....	5
—Of case. See Case, 2 Law Rec.....	
—Appellant to mark. Rule 32, 2 Law Rec.	13

	Page
—Proposed amendments must refer to stenographer's minutes, Rule II, City Court, 2 Law Rec.....	18
—Answer served after demurrer may be as of course, 2 Law Rec.....	28
ANCILLARY LETTERS OF GUARDIANSHIP—Are within scope of Sec. 2832 of Code of Civ. Pro., 2 Law Rec.....	
—Ancillary Letters, 1 Law Rec.....	154
—To Husband, 1 Law Rec.....	19
ANSWER, Contents of, 1 Law Rec.....	161
—Joint, by Co-Defendants, 1 Law Rec...	232
—Return of, 1 Law Rec.....	234
—Amended, 1 Law Rec.....	164
—Frivolous, 1 Law Rec.....	112
—Supplemental, 1 Law Rec.....	117
—Costs of Amendment, 1 Law Rec.....	62
—Amended, striking out, 1 Law Rec....	45
—Sham, striking out, 1 Law Rec.....	45
—Extending time to, 1 Law Rec.....	48
—Order extending time, 1 Law Rec.....	58
—After demurrer, 1 Law Rec.....	2
—After appeal, 1 Law Rec.....	2
—Striking out, 1 Law Rec.....	7
—Time for amended, 1 Law Rec.....	14
—Service of after motion, 1 Law Rec...	14
—Bill of particulars to frame, 2 Law Rec.	41
—After demurrer not an amended pleading, 2 Law Rec.....	28
—Court may strike out in action for divorce, 2 Law Rec.....	24
—Demurrer to. See Demurrers.	
—Folioing, when waived, 2 Law Rec.....	123
—Frivolous, must appear on the face, no argument necessary, 2 Law Rec.....	133
—Frivolous, what is, 2 Law Rec.....	44

	Page
—Interpleader after service of, laches, 2 Law Rec.	89
—In foreclosure suit without merit, costs awarded against, 3 Law Rec.	9
—Effect of no denials therein, 3 Law Rec.	102
—Power of Surrogate in, over personal property only, 3 Law Rec.	146
—Copy of proposed answer should be served in motion to open default, 3 Law Rec.	212
—Motion for judgment upon frivolous, when made, 3 Law Rec.	214
—Its effect upon right to amend as of course, 3 Law Rec.	214
—Supplemental, when leave should be granted, 3 Law Rec.	223
—Sufficiency not passed upon, 3 Law Rec.	223
—See "Pleading."	
 APPEAL. Duties of the appellant, defined, 37 C. P. R.	
—Case on, must contain material evidence, 37 C. P. R.	206
—Where, in the order of reversal the Appellate Division does not specify the ground, the Court of Appeals must presume that the judgment was not reversed upon a question of fact, 37 C. P. R.	253
—From an order denying a motion for a new trial based upon a ground specified in section 999 of the Code, 37 C. P. R.	350
—A director appealing from a final judgment entered against him alone in a creditor's action may review the interlocutory judgment establishing the liability of the directors, 38 C. P. R.	273
—Judgment of reversal on appeal by some directors of corporation in action to	

	Page
enforce their statutory liabilities innures to benefit of one not appealing, 38 C. P. R.	473
—On appeal from order granting new trial, Appellate Division will refer to opinion below, 38 C. P. R.	415
—Notice of entry of judgment as “entered herein in the office of the clerk of the court within named” is sufficient to limit time to appeal, 38 C. P. R.	340
—An undertaking must be filed to obtain stay of proceedings upon appeal from decree of Surrogate removing executrix, 38 C. P. R.	210
—Undertaking on appeal held not to stay proceedings upon judgment for removal of obstructions, 38 C. P. R.	422
—Appellate Court will not review merits of arbitrator’s decision where no error appears on face of award, 38 C. P. R.	241
—Appellate Division has power to permit filing of new undertaking to perfect appeal from Surrogate’s Court, 38 C. P. R.	352
—The preparation, settlement and filing of case is a part of record of court below, and default must be relieved at Special Term; after case settled and filed, any default must be cured on motion before Appellate Division, 38 C. P. R.	60
—Undertaking given on appeal to Appellate Division from Surrogate’s decree is not governed by Code Civ. Proc., Sect. 1335, as to justification of sureties, 38 C. P. R.	352
—When a defendant failing to ask that the complaint be made more definite, cannot complain on appeal that no cause of action is stated, 39 C. P. R.	192
—A State officer, bringing an action, failed to move his case for trial, on the day	

	Page
selected, his motion to set the case for trial on a later day was addressed to the discretion of the Court, 39 C. P. R.....	249
—Where the Appellate Division is silent as to the grounds of reversal, it is assumed to be a reversal on question of law, 39 C. P. R.	261
—Form of Case, 1 Law Rec.....	208
—Service of Notice, 1 Law Rec.....	207
—From Surrogate's Decree, Stay, 1 Law Rec.	144
—Suggestion of Appellate Court, 1 Law Rec.	101
—Stay of Proceedings on by Lower Court, 1 Law Rec.	101
—From Taxation of Costs, 1 Law Rec... ..	51
—Service of written notice of entry of judgment or order necessary, even when the appeal is taken from a judgment or order entered by appellant himself, 2 Law Rec... ..	117
—Party undertaking to limit time for, held to strict practice. Actual knowledge of entry of order does not set time running or dispense with notice, 2 Law Rec.....	117
—See Undertaking.	
—See Notice of Appeal.	
—Notice of, to Court of Appeals when time expires, 3 Law Rec.....	210

APPLICATION TO COURT—For services of summons on a Lunatic, 3 Law Rec..... 21

APPOINTMENT OF APPRAISERS—See Appraisers.

	Page
APPRAISERS —Appointment of, made only upon the application of executor or administrator, 3 Law Rec.....	27

ARBITRATION—See also Appeal.

—An award under a submission is presumed to be correct, 38 C. P. R.....	241
—Arbitrator has power to determine as to right to interest, 38 C. P. R.....	241
—Under Lease, 1 Law Rec.....	179

ARREST —Provisions of the Civil Code relating to arrest in actions on contract do not apply to an action in Justice Court, 38 C. P. R.	363
—When an affidavit used to obtain an order of arrest in action for fraud in the sale of a picture, is sufficient, 39 C. P. R.....	91
—See “HABEAS CORPUS,” 39 C. P. R.	
—See UNDERTAKING, 2 Law Rec.....	
—In an action for libel, what averments in affidavit privileged, 2 Law Rec.....	155
—In judgment creditor’s action on ground of fraud, when vacated, 2 Law Rec.....	49
—Order of, can be sustained only on ground on which it was procured, 2 Law Rec.	102
—Order of, scandalous matter contained in affidavit on can be stricken out, 2 Law Rec.	101
—Order of, motion to vacate, 3 Law Rec.	183
—Insufficiency of complaint in, 3 Law Rec.	183

	Page
ASSESSMENT. Of damages, upon remittitur from Court of Appeals, where assessed, 3 Law Rec.	110
—Review of, 1 Law Rec.....	32, 211, 250
—And Taxation of Non-Resident, 1 Law Rec.	215
ASSETS, of Decedent, 1 Law Rec.....	18
—Removal of, 1 Law Rec.....	19
—Equitable, how reached in judgment creditor's action, 2 Law Rec.....	119
—Real estate under contract of sale at the time of decedent's death are such, 2 Law Rec.	165
ASSIGNEE, Estoppel, 1 Law Rec.....	189
—Accounting of, 1 Law Rec.	14
—Sale of Assets, 1 Law Rec.....	2
—Has no power to open a judgment against assignor when satisfied, 2 Law Rec.	74
—Not a public officer, 2 Law Rec.....	74
—Of claim against an estate, may maintain same action as other creditors, 2 Law Rec.	106
—Accounting of, with assignor, 3 Law Rec.	33
—When not allowed counsel fees, 3 Law Rec.	87
—Of creditor can compel administratrix to account, 3 Law Rec.....	208
ASSIGNMENT OF ACTION. A cause of action for a wrong done to an estate by false representations on sale of certain property is assignable, 37 C. P. R.	102

	Page
—Of Claim. When a claim or demand may be transferred, 37 C. P. R.....	158
—Of trust income, see Trusts, 38 C. P. R.	
—Validity Presumed, 1 Law Rec.....	189
—Accounting under, 1 Law Rec.....	14
 ASSIGNOR—Has the right to select his assignee; wife may be chosen, 2 Law Rec....	 76
 ASSOCIATIONS. The county committee of a political party can be sued as a voluntary association, 39 C. P. R.....	 296
 ATTACHMENT. Excessive fees of sheriff. Return of property, 37 C. P. R.....	 183
—Affidavit for warrant of attachment held to be insufficient, 38 C. P. R.....	103
—Complaint held to state sufficient ground for writ of, against non-resident, 38 C. P. R.....	269
—When an attachment in an action brought to recover price of a locomotive, sold to defendant based on affidavit that the defendant is a foreign corporation, will not be granted, 39 C. P. R.....	105
—A warrant cannot be issued against real property, when brought by the holder of a note to charge the real estate of a deceased maker, 39 C. P. R.....	347
—It is in the nature of a proceeding in rem., 39 C. P. R.....	347
—Jurisdiction, 1 Law Rec.....	217
—Subsequent, 1 Law Rec.....	207
—Affidavit, 1 Law Rec.....	194
—Inventory by Sheriff, 1 Law Rec.....	197

	Page
—Liquor Tax Certificate, 1 Law Rec....	197
—Preferred Cause, 1 Law Rec.....	109
—Merits of the Action, 1 Law Rec.....	91
—Notice of Levy, 1 Law Rec.....	93
—Against the person, 1 Law Rec.....	6, 77
—Pending Appeal, 1 Law Rec.....	54
—Fraudulent Transfer, 1 Law Rec.....	60
—Vacating on Papers, 1 Law Rec.....	32
—Second, 1 Law Rec.....	32
—Fraudulent Transfer, 1 Law Rec.....	3
—Affidavit for, 1 Law Rec.....	3
—Domestic Corporation, 1 Law Rec....	4
—Unlawful Preferences, 1 Law Rec....	4
—Grounds of, 1 Law Rec.....	5
—Service of, 1 Law Rec.....	201
—Service of, 1 Law Rec.....	243
—Affidavit of Facts, 1 Law Rec.....	216
—Previous Application, 1 Law Rec....	236
—Affidavit for, 1 Law Rec.....	246
—Several, 1 Law Rec.....	37
—Property must be capable of manual delivery, 2 Law Rec.....	25
—How service to be made of warrant when property otherwise, 2 Law Rec.....	25
—Motion to vacate, court has power to amend a warrant in, 2 Law Rec.....	176
—Motion to vacate not granted, when, affidavit has no venue, defect does not render affidavit void; may be corrected by amendment, 2 Law Rec.....	219
—Motion to vacate, sufficiency of proof, what affidavit must contain, 2 Law Rec....	137
—Warrant of, not original process, may be amended, 2 Law Rec.....	176
—When examination of third party will not be required, 2 Law Rec.....	169
—Omission as to residence of plaintiff, fatal, 3 Law Rec.....	43

	Page
—When wrongful, 3 Law Rec.....	55
—Vacating same, 3 Law Rec.....	65
—Form as to averment as to counter- claim, 3 Law Rec.....	65
—Motion to vacate; necessary recitals in, 3 Law Rec.....	190
—What summons must contain, 3 Law Rec.	200
ATTORNEY, who buys claims "with the in- tent and for the purpose of bringing an ac- tion thereon," is denied the aid of the courts, 37 C. P. R.....	105
—Orders may be served on, 1 Law Rec..	225
—Privilege of, 1 Law Rec.....	195
—Removal of, 1 Law Rec.....	142
—Lien of, for services, 1 Law Rec.....	142
—Lien, Reference, 1 Law Rec.....	76
—Compelled to disclose client's residence, 2 Law Rec.....	57
—Bill for services, long account, com- pulsory reference, when ordered, 2 Law Rec.	163
—Cannot waive issuance of citation, when, 2 Law Rec.....	34
—Substitution of, consent of attorneys not sufficient, party cannot change his at- torney without leave of court, 2 Law Rec...	194
—Defendant's attorneys no lien unless counterclaim set up in answer. Rights of plaintiff when defendant has settled, 2 Law Rec.	96
—Who must subscribe Notice of Appeal, 3 Law Rec.....	16
—Right to retain papers, 3 Law Rec....	72
—Authority of, in a motion for alimony, 3 Law Rec.....	132
—Claim of, may be referred, 3 Law Rec..	25

	Page
ATTORNEY AND CLIENT. What misconduct on the part of an attorney justifies his disbarment, 37 C. P. R.....	34
—Selling out clients, 37 C. P. R.....	34
—Enforcement of lien to a cause of action, 37 C. P. R.....	113
—See Champerty and Maintenance.	
—Actions to enforce an attorney's lien upon a cause of action which has been settled without his consent, 37 C. P. R.....	152
—Refusal of attorney to answer questions as ground for disbarment, 38 C. P. R.....	217
—An attorney who is admitted to bar in this State will be disbarred, under Code Civ. Proc., Sect. 66, where he suppressed fact that he had previously been disbarred in another State, 38 C. P. R.....	63
—Attorney is not guilty of misconduct by aiding client to escape from State in absence of proof of intention to forfeit bail, 38 C. P. R.....	217
—Attorney is guilty of unprofessional conduct by practicing under name of disbarred attorney, 38 C. P. R.....	217
—Defense to disbarment held to be insufficient, 38 C. P. R.....	53
—Mere fact that attorney is to receive ten per cent. of recovery does not render agreement unconscionable, 38 C. P. R.....	396
—Attorney's lien attaches to fund in hands of defendant, 38 C. P. R.....	160
—Attorney's lien is not defeated by plaintiff's settlement of an action for injuries, 38 C. P. R.....	160
—A client is a necessary party to a proceeding to enforce an attorney's lien, 38 C. P. R.	160
—Attorney has no lien under Code Civ.	

	Page
Proc., Sect. 66, entitling him to enter judgment on appeal, 38 C. P. R.....	356
—Accumulation from trust created for support and education of beneficiary, and wrongfully withheld by trustees, is subject under Code Civ. Proc., Sect. 66, to lien of attorney in successful proceeding to compel trustees to pay over (Annotated), 38 C. P. R.	38
—Court may, upon petition of client or attorney, determine and enforce latter's lien, 38 C. P. R.....	489
—Appointment of receiver of client's property does not defeat lien of attorney, 38 C. P. R.....	489
—Determination of attorney's fees in negligence action brought for an infant suing as poor person in State Court, but transferred to Federal Court, should be remitted to the Surrogate, before whom the matter of the infant's guardianship is pending, 38 C. P. R.	283
—The attorney should sign a stipulation waiving right of secrecy as to knowledge acquired by physicians who attended client, 38 C. P. R.....	135
—Only duly admitted attorneys may practice in the Municipal Courts, 39 C. P. R.	17
—Has a lien for his services upon the amount received in settlement, 39 C. P. R..	17
—Enforcement of lien, 39 C. P. R.....	17
—A retainer signed by one who had suffered personal injuries, at the instance of an unknown party who asked him if he needed money, and who promised to call again, is not invalid, under section 66, 39 C. P. R.	121
—The Supreme Court has power over its	

	Page
attorneys at law to compel them to deal fairly with their clients, 39 C. P. R.....	127
——Report of referee as to fees, 39 C. P. R.	127
——The proceeding to determine the compensation of an attorney is a special proceeding, 39 C. P. R.....	127
——Purchasing client's property which they had deposited as collateral security, 39 C. P. R.	192
——Evidence showing a petition to compel an attorney to turn over money alleged to have been collected by him, examined, 39 C. P. R.	265
——An attorney having claim to one-half of plaintiff's money can have satisfaction of judgment set aside, 39 C. P. R.....	363

ATTORNEY IN FACT. See Principal and Agent, 38 C. P. R.

B

BANKRUPTCY. Where a bankrupt was entitled to the discharge of a judgment against his firm, based on a debt provable in the bankruptcy proceedings, 37 C. P. R..	317
——Of client does not defeat attorney's right to enforce lien attaching four months' prior to proceedings, 38 C. P. R.....	489
——The title to property not described in schedules of bankrupt is in the trustee, 38 C. P. R.....	48

BILL. Acceptance of, 3 Law Rec.....	48
——Of Exceptions, Form of, 1 Law Rec....	118

	Page
BILL OF LADING —Delivery of, for the purpose of securing payment of drafts, sufficient to pass title, 3 Law Rec.....	55
 BILL OF PARTICULARS —The right of a defendant to a bill of particulars may not be denied, on the ground that the defendant knew as much about the cause of an accident as the plaintiff, 39 C. P. R.....	241
—See Pleading.	
—A motion for bill of particulars made before answer is premature, 39 C. P. R....	162
—See Discovery.	
—Particulars, 1 Law Rec.....	215
—Conversion, 1 Law Rec.....	255
—Details of claims, 1 Law Rec.....	26
—Negligence, 1 Law Rec.....	16
—Slander, 1 Law Rec.....	73, 97
—To frame answer, 2 Law Rec.....	41
—What moving party must swear to, 3 Law Rec.	7
 BOND —On appeal, see Appeal, 38 C. P. R.	
—By officer of a private corporation; good only for the time for which it is given, 2 Law Rec.....	100
—In mechanic's lien, becomes a substitute for, 2 Law Rec.....	47
—Guaranty of payment of, 3 Law Rec...	31
 BOOKS. Production of, 1 Law Rec.....	9
 BREACH OF CONTRACT. There can be no recovery for wages stipulated for, except services have been rendered, 2 Law Rec....	16

	Page
BUILDING LAW, Plans, 1 Law Rec.....	250
—And M. L. Ass'ns, Taxation of, 1 Law Rec.	48

C

CALENDAR—Improperly on, must be according to date of issue, 2 Law Rec.....	18
—Motion to strike cause from day calendar, when granted, 2 Law Rec.....	202
—When a motion to strike from should be granted, 2 Law Rec.....	191
—Cause improperly on, 3 Law Rec.....	3

CASE. Form of, 1 Law Rec.....	208
—Settlement by Consent, 1 Law Rec....	191
—Re-Settlement of, 1 Law Rec.....	191
—Amendments of same, where made, 2 Law Rec.	49
—Evidence taken on trial not to be stricken out by trial judge, 2 Law Rec.....	105
—See AMENDMENTS.	

CAUSE OF ACTION. Improperly on calendar, 3 Law Rec.....	3
—But one, where complaint sets up different grounds and distinct theories for a recovery upon a single claim, 3 Law Rec.....	8
—But one, what is the test, 3 Law Rec....	8
—Two more perfect causes of action must be improperly united to warrant demurrer for misjoinder, 3 Law Rec.....	99
—Change of. See Pleading; Joinder of Cause of Action, Calendar, 37 C. P. R.	

	Page
CERTIFICATE OF INCORPORATION, 1 Law Rec.	16
CERTIORARI. to Review Assessment, 1 Law Rec.	33
CHAMBERS. Practice at, 1 Law Rec.	119
CHANGE OF NAME, 1 Law Rec.	91
CHAMPERTOUS CONDUCT. What misconduct on the part of an attorney justifies his disbarment, 37 C. P. R.	34
——Selling out clients, 37 C. P. R.	34
CHAMPERTY AND MAINTENANCE. Facts which do not bring the case within the statute, 37 C. P. R.	105
——Attorney buying claims, 37 C. P. R. . . .	105
——See ATTORNEY AND CLIENT.	
CITATION. When issuance of cannot be waived, 2 Law Rec.	34
——Publication of, 1 Law Rec.	138
CITY COURT OF ELMIRA. Jurisdiction of justice in, 37 C. P. R.	181
CITY COURT OF NEW YORK. City Court is not vested with jurisdiction of an action against the city, 37 C. P. R.	372

	Page
CLAIMS AGAINST DECEDENT, 1 Law Rec..	140
—Against N. Y. City, demand, 1 Law Rec.	61
—To real property, 1 Law Rec.....	65
 CLERK. Official acts of, 1 Law Rec.....	 183
 CLIENT. Attorney compelled to disclose residence of, 2 Law Rec.....	 57
 CLOUD—Filing map not a cloud on title, 2 Law Rec.	 61
 CLUBS—Form of certificate to incorporate, 1 Law Rec.	 218
 CODE OF CRIMINAL PROCEDURE. Section 671, 3 Law Rec.....	 95
 CO-EXECUTOR. Representative of Deceased, 1 Law Rec.....	 20
 COMMISSION. Foreign. Proof by affidavit of materiality of testimony is indispensable condition of issuing subpoena, 2 Law Rec..	 66
—Subpoena requiring witness to appear and be examined, issued by foreign court mandatory, 2 Law Rec.....	 188
—See OPEN.	
—Open, when granted, 3 Law Rec.....	69
—Open, 1 Law Rec.....	209

	Page
COMMITTEE Of incompetent person, 1 Law	
Rec.	13
—Appointment of, only after service of a	
summons, 3 Law Rec.	21
 COMMON CARRIER. Necessary allegations in	
complaint against, 3 Law Rec.	38
 COMPROMISE, Rescinding of, 1 Law Rec.	100
 CO-OPERATIVE Loan Ass'n, Taxation, 1 Law	
Rec.	48
 CO-PARTNERSHIP PROPERTY, Execution,	
1 Law Rec.	190
 COMMON COUNCIL, Building Law, 1 Law	
Rec.	250
 COMMITMENT FOR CONTEMPT, Review of,	
1 Law Rec.	137
—Void, 1 Law Rec.	164
 COMPLAINT. Verification of a complaint by	
a person other than the party, 37 C. P. R.	181
—Motion to dismiss complaint on ground	
that it did not state facts sufficient to con-	
stitute a cause of before any evidence was	
taken, 37 C. P. R.	235
—See "Appeal."	

	Page
—Definite and certain, 1 Law Rec.....	16
—Demurrer, 1 Law Rec.....	16
—Conversion of money, 1 Law Rec.....	36
—Form of action, 1 Law Rec.....	36
—Misjoinder of defendants, 1 Law Rec...	35
—Against directors, 1 Law Rec.....	34
—Against Stockholder, 1 Law Rec.....	29
—Details of claims, 1 Law Rec.....	26
—On bond, 1 Law Rec.....	72
—Against sub-contractor, 1 Law Rec....	71
—Amendment after appeal, 1 Law Rec..	61
—Allegations of fraud, duress or mis- take, 1 Law Rec.....	100
—Against corporation, 1 Law Rec.....	104
—For libel, 1 Law Rec.....	127
—Several causes, 1 Law Rec.....	163
—More definite and certain, 1 Law Rec.	256
—Waiver of order, 1 Law Rec.....	256
—Amendment of, 1 Law Rec.....	252
—Demand for receiver, 1 Law Rec.....	248
—Slander, presumption; 1 Law Rec.....	245
—By physician, to recover for services, necessary allegations of, 2 Law Rec.....	60
—Cannot unite cause of action against an estate and the defendants individually; bad for duplicity, 2 Law Rec.....	125
—Under section 559 to recover costs and expenses of counsel on an undertaking on arrest, 2 Law Rec.....	1
—What must show in action of inter- pleader, 2 Law Rec.....	119
—Setting up different grounds and dis- tinct theories for a recovery upon a single claim, but one cause of action, 3 Law Rec.	8
—Necessary allegations in, against com- mon carrier, 3 Law Rec.....	38
—Amendment of, 3 Law Rec.....	69

	Page
——When amended as of course what may be done thereby, 3 Law Rec.....	73
——Filing of, under an order of publication, 3 Law Rec.....	76
——In an action to recover for remote consequence of sale. Necessary allegation, 3 Law Rec.	80
——Service of, when not too late, when last day falls on Sunday, 3 Law Rec.....	135
——Caption of, different from summons, 3 Law Rec.	148
 COMPROMISE. Of a claim for rent to accrue, not allowed to assignee, 3 Law Rec.....	 33
 COMPULSORY REFERENCE. Not permitted to take away right of trial by jury when cause of action is upon contract, 3 Law Rec.	 24
——When cannot be ordered, 2 Law Rec...	209
 CONDEMNATION PROCEEDINGS — See Costs.	
 CONDEMNATION. See “Eminent Domain.”	
 CONFESSION OF JUDGMENT. Liability for costs in, 37 C. P. R.....	 141
 CONFIRMATION OF REFEREE’S REPORT. See Harris v. Taylor, et al., 3 Law Rec....	 3

	Page
CONDITION PRECEDENT. Must be pleaded, 2 Law Rec.	9
CONSIDERATION. Failure of, in bill or draft, 3 Law Rec.	48
CONSOLIDATION. Of actions, 3 Law Rec.	64
CONSPIRACY. When injunctive relief granted, 3 Law Rec.	73
CONTEMPT. In a proceeding to punish, as for a civil contempt, the violation of an injunc- tion order, the want of authority in the court to make the original order is a defense to the proceeding, 37 C. P. R.	56
—Instance where contempt proceedings against the officers of an association for failure to comply with an injunction order cannot be sustained, 37 C. P. R.	56
—A disobedience by witness in supple- mentary proceedings entitles creditor to re- cover all his damages, 37 C. P. R.	121
—When action for fine and costs may be maintained, 37 C. P. R.	121
—When a person is committed for con- tempt, the particular circumstances of his offences must be set forth, 37 C. P. R.	121
—See Divorce, 38 C. P. R.	
—See Court; Supplementary Proceed- ings.	
—By judgment debtor, 1 Law Rec.	8
—Striking out answer, 1 Law Rec.	7
—Form of order for, 1 Law Rec.	7

	Page
—Fine for, 1 Law Rec.....	7, 47
—By executor, 1 Law Rec.....	79
—Refusal to answer, 1 Law Rec.....	97
—Before referee, 1 Law Rec.....	97
—Habeas corpus, 1 Law Rec.....	137
—Fine and commitment for, 1 Law Rec.	227
—Resisting receiver, 1 Law Rec.....	227
—Bailable attachment, 1 Law Rec.....	225
—Demand must be shown, 2 Law Rec...	33
—Counsel fees, 2 Law Rec.....	33
—Failure to purchase in a foreclosure sale, not, 2 Law Rec.....	170
—In supplementary proceedings, 2 Law Rec.	132
—Service of order in, 2 Law Rec.....	57
—Use of name in an action for divorce, 2 Law Rec.	172
—When executor in contempt may be dis- charged, 2 Law Rec.....	143
—Notice of motion insufficient to punish for, 3 Law Rec.....	2
—Where none, in supplementary proceed- ings, wrong person served, 3 Law Rec.....	143
—For failure to pay alimony, 3 Law Rec.	203
—Motion to punish must be made upon order to show cause, 3 Law Rec.....	203

CONTRACT—Prayer for specific performance of contract for sale of land is a counter- claim within statute relating to disposition of property during appeal, 38 C. P. R.....	213
—The parties to a contract of insurance may stipulate for less than six years in which to begin an action, 39 C. P. R.....	283
—Action for wages under a contract. See ACTION FOR WAGES, 2 Law Rec.....	16

	Page
CONTRIBUTORY NEGLIGENCE. See EMPLOYER'S LIABILITY ACT, 37 C. P. R.	
CONVERSION, Form of action, 1 Law Rec....	46
—Of property, injunction, 1 Law Rec....	188
—See Arrest, 3 Law Rec.	
CORPORATION. Action by a stockholder to compel president of corporation to account for misconduct as president, 37 C. P. R....	
—Appeal by some directors as inuring to benefit of all, see Appeal, 38 C. P. R.	195
—Enforcement of attorney's lien against foreign corporation, see Courts, 38 C. P. R.	
—Members of committee empowered to liquidate affairs of corporation are officers of the corporation authorized to verify pleadings, 38 C. P. R.....	383
—An action to dissolve a corporation upon application of a creditor who is also interested in another corporation of same name, 39 C. P. R.....	100
—Where officers of a corporation issued stock without authority, or any consideration, flowing to the corporation, they can be removed for misconduct, 39 C. P. R.....	331
—When re-elected after misconduct, will not condone their fault, 39 C. P. R.....	351
—Attachment, 1 Law Rec.....	4
—Filing report, 1 Law Rec.....	34
—Insolvent, assets, 1 Law Rec.....	27
—Report of assets for taxation, 1 Law Rec.	55
—Residence of, 1 Law Rec.....	54
—Taxation after consolidation, 1 Law Rec.	41

	Page
—Religious, liability, 1 Law Rec.....	74
—Inspection of books of, 1 Law Rec.....	66
—Assets of, 1 Law Rec.....	91
—Taxation of, 1 Law Rec.....	91
—Complaint against, 1 Law Rec.....	104
—Foreign, certificate of designatory, 1 Law Rec.	21
—Foreign, designation of agent, 1 Law Rec.	121
—Foreign, service on, 1 Law Rec.....	121
—Foreign, abatement of action, 1 Law Rec.	167
—Liable for malicious prosecution, 1 Law Rec.	156
—Negligence of servant of, 1 Law Rec..	149
—Ultre vires, 1 Law Rec.....	193
—Notice to Attorney General, 1 Law Rec.	229
—Preferences against, 1 Law Rec.....	257
—Of clubs, forms of, 1 Law Rec.....	218
—Voluntary dissolution, 1 Law Rec....	210
—May maintain an action for a libel concerning its trade or occupation, 2 Law Rec.	104
—Default in pleading of, 3 Law Rec.....	31
—Transfer of assets to succeeding, 3 Law Rec.	115
—Demand upon treasurer for sworn statement, 3 Law Rec.	155
—Must be verified, 3 Law Rec.	155
—Penalty, 3 Law Rec.	155

COSTS. Instance of where right to taxation of costs was lost, 37 C. P. R.	82
—Instance of a case where an extra allowance of costs will not be granted, 37 C. P. R.	191
—Liability for costs in judgment by confession, 37 C. P. R.	141
—See Pleading.	

	Page
—Defendant in negligent action brought by non-resident widow without property in this State is entitled to security for costs, 38 C. P. R.	69
—Absolute right to compel non-resident plaintiff to give security for, is waived unless asserted before answer, 38 C. P. R. 485 to	492
—Non-resident appointed in this State administratrix of estate of non-resident decedent to bring action in this State is not absolutely required to give security for costs, 38 C. P. R.	359
—Defendant in action by non-resident plaintiffs, as receiver, entitled to security for, 38 C. P. R.	432
—Excuse for delay in application for security for costs held sufficient, 38 C. P. R. ..	485
—Non-resident suing as poor person is not required to give security for costs, 38 C. P. R.	130
—Owners of milk cans who have transferred them to corporation of which they are stockholders, not liable for costs in unsuccessful action by agent to recover penalty for their detention, 38 C. P. R.	226
—An application for the commitment of an insane person is not a "special proceeding" so as to render an unsuccessful petitioner liable for costs, under Code Civ. Proc., Sect. 3240, 38 C. P. R.	79
—An unsuccessful petitioner in lunacy proceedings erroneously charged with costs need not appeal, 38 C. P. R.	79
—Right to costs when recovery less than \$500 in New York and Kings Counties, 38 C. P. R.	433
—In Fourth Judicial Department rule has been adopted not to award costs on setting	

	Page
aside verdict for insufficiency, 38 C. P. R....	87
—To entitle party to extra allowance case must be difficult and extraordinary, and that question is reviewable by Court of Appeals (Annotated), 38 C. P. R...465, 470, 472, 473, 474	
—Extra allowance is not authorized in action on contract to recover money for sale of real property, 38 C. P. R.	465
—Costs will not be given as matter of law against complaining party on granting motion to set aside verdict for insufficiency, 38 C. P. R.	87
—Costs should be imposed upon plaintiff as condition for new trial on ground that verdict against evidence, 38 C. P. R.	415
—Plaintiff not entitled to costs of proceedings before notice of trial upon sustaining demurrer to answer, 38 C. P. R.	187
—Dismissal of complaint as to defendant who answered separately, 39 C. P. R.	140
—Costs improperly awarded, 39 C. P. R.	140
—Extra allowance in the discretion of the judge, 39 C. P. R.	142
—Plaintiff may recover in one action the costs awarded on appeal, and costs at Trial Term, upon the breach of the bond, 39 C. P. R.	176
—See Mechanic's Lien.	
—Appeal from taxation, 1 Law Rec....	51
—Interrogatories, 1 Law Rec.	64
—Service fees, 1 Law Rec.	64
—Of amendment of answer, 1LawRec....	62
—In surplus money proceedings, 1 Law Rec.	93
—Elevated R. R., 1 Law Rec.	90
—Merits of defence, 1 Law Rec.	117
—Allowance on mortgage on leasehold, 1 Law Rec.	113

	Page
—Actions in forma pauperis, 1 Law Rec.	
.....	106, 107
—Liability of assignor of claim, 1 Law	
Rec.	103
—On appeal in Surrogate's Court, 1 Law	
Rec.	138
—In forma pauperis, 1 Law Rec. 148, 235,	236
—Security for, 1 Law Rec.	148, 165
—Stay of motoin, 1 Law Rec.	177
—Adjudication between defendants, 1	
Law Rec.	167
—Supplementary proceedings for, 1 Law	
Rec.	200, 202
—Additional allowance, 1 Law Rec.....	192
—On motion, 1 Law Rec.	187
—Surplus monies, 1 Law Rec.	186
—On discontinuance, 1 Law Rec.....	211
—Security for laches, 1 Law Rec. . .	211, 213
—Security for discretion, 1 Law Rec.	206
—Non-payment of stay, 1 Law Rec.	205
—Security by administrator, 1 Law Rec	221
—Retaxation of, by motion, 1 Law Rec....	257
—Voluntary security for, 1 Law Rec.....	246
—And allowance on offer for judgment, 1	
Law Rec.	245
—On disagreement of jury, 1 Law Rec...	239
—On opening default, 1 Law Rec.	239
—On collateral matter, 1 Law Rec.	215
—Recovery less than \$50, 1 Law Rec. 235,	236
—Se In Forma Pauperis, 1 Law Rec.	
—In equity actions, on offer of judgment	
when not affected, 2 Law Rec.	66
—Motion, 2 Law Rec.	45
—Motion for re-taxation. No papers to be	
used or objections raised except those which	
were presented to the clerk at the time of	
the taxation, 2 Law Rec.....	130

	Page
—On a motion for a new trial; not discretionary, 1 Law Rec.	28
—Security for; denied on account of laches, 2 Law Rec.	10
—When non-payment of, a stay, 2 Law Rec.	131, 151
—When not allowed to attorney, when defendant has settled, 2 Law Rec.	96
—When single costs only are awarded to successful party, 2 Law Rec.	111
—See Undertaking.	
—Foreclosure suit, when awarded against answering defendant, 3 Law Rec.	9
—In condemnation proceedings, 3 Law Rec.	46
—Extra allowance in dower actions, 3 Law Rec.	52
—Security for, 3 Law Rec.	53
—Belong to attorney, 3 Law Rec.	93
—One bill for several demurrers, 3 Law Rec.	119
—Where separate judgments have to be entered, separate bills of costs may be taxed, 3 Law Rec.	119
—Settlement of order upon remittitur from Court of Appeals, 3 Law Rec.	119
—Taxation of, what disbursements allowed, 3 Law Rec.	153
—On motion for new trial, 3 Law Rec.	213
—As a condition to amend in the nature of a penalty, 3 Law Rec.	222

COUNSEL FEES. Paid by administrator, when disallowed, 2 Law Rec.	94
—See Action for Separation.	

	Page
COUNTER-CLAIM. Special grounds of demurrer are provided where counter-claim is in nature of a complaint, 37 C. P. R.	131
—See Action, 39 C. P. R.	
—Reply to, 1 Law Rec.	45
—Removal from District Court, 1 Law Rec.	45
—Increase of, 1 Law Rec.	45
—Preferred Cause, 1 Law Rec.	44
—Action for rent, 1 Law Rec.	126
—Jury Trial, 1 Law Rec.	126
—Demurrer to, 1 Law Rec.	169
—Security for costs, 1 Law Rec.	214
—Reply, 1 Law Rec.	232
—Extra allowance, 1 Law Rec.	226
—Against assignor, 1 Law Rec.	238
 COUNTY COURTS. Jurisdiction of under section 3063, 37 C. P. R.	 173
 COUPONS. Guaranty of payment of, 3 Law Rec.	 31
 COURT OF GENERAL SESSIONS. Has no power to entertain motion for new trial after judgment, 37 C. P. R.	 219
 COURTS. Construction of Code as to decisions of courts, 37 C. P. R.	 152
—Power of New York City Court to grant new trial, see Trial, 38 C. P. R.	
—Jurisdiction of New York City Court is not presumed, 38 C. P. R.	62
—New York City Court has no jurisdiction	

	Page
tion to cancel mechanic's lien for \$7,300, 38 C. P. R.	62
—Code Civ. Proc. prevails over the rules of the New York City Court, 38 C. P. R....	297
—General Rules of Practice as applicable to Court of Claims, 38 C. P. R.	136
—Municipal Court of New York City has no jurisdiction over action in summary proceedings to remove squatters, 38 C. P. R....	358
—Surrogate Court has no jurisdiction to determine claim of general creditor of beneficiary under trust, who is attempting to reach surplus, 38 C. P. R.	38
—A trial term of the Supreme Court may be extended beyond time set for the session, 38 C. P. R.	97
—Jurisdiction of Supreme Court is presumed, 38 C. P. R.	367
—Change in name of court does not render judgment unenforceable, 38 C. P. R.	386
—One indicted for murder has no right to be tried in any particular court-room, 38 C. P. R.	97
—Justice of the Peace loses jurisdiction by adjournment at request of defendant because no bill of particulars served, 38 C. P. R.	342
—Court has no power to enforce resident attorney's lien against fund in hands of foreign corporation, 38 C. P. R.	160
—Sections 888 and 894 of the Code do not authorize the issuance of a commission to take testimony of a non-resident and absent witness for use on a motion to punish a party for contempt, 39 C. P. R.	148
—See Verdict.	
—Section 2983 of the Code applies to the Municipal Court, and where a case is called	

	Page
for trial, and a commission introduced, under objection the court may order an ad- journment to allow the correction of the commission, 39 C. P. R.	263
 CREDITOR'S BILL, Trust Fund, 1 Law Rec...	129
—Claim against estate, 1 Law Rec. ...	81, 82
—Remedy against estate, 1 Law Rec....	139
—How cited in an action for sale of deced- ent's real estate, 2 Law Rec.	124
—When a creditor of an estate is not en- titled to payment, 2 Law Rec.	210
 CRIMINAL OFFENSES. Authority of the court to discharge a prisoner when the com- mitment is irregular and defective, 37 C. P. R.	294
 CRIMINAL LAW. Right to be tried in particu- lar court-room, see Courts, 38 C. P. R.	
 CROSS DEMANDS, Trial of, 1 Law Rec.	117

D

DAMAGES. In an action to recover real prop- erty, plaintiff is entitled to damages consist- ing of the rents and profits, 37 C. P. R.	235
—The money damages, sustained by each of several lot owners by the commission of a nuisance, how to be determined, 39 C. P. R.	201
—Damages to be paid to owners in con-	

	Page
demnation proceedings, how ascertained, 39	
C. P. R.	81
—Charge to jury, 1 Law Rec.	57
—Loss of services, 1 Law Rec.	57
—For causing death of child, 1 Law Rec.	57
—To property by E. R. R., 1 Law Rec....	90
 DATE OF ISSUE. See Issue, 1 Law Rec.	
 DECEASED CO-EXECUTOR, 1 Law Rec.....	20
 DECEDENT'S ESTATE, Indebtedness to, 1 Law Rec.	175
 DECEDENT'S REAL ESTATE. Sale of, must be pursued strictly, 2 Law Rec.	60
 DECEIT. Cause of action for, when not a per- sonal injury, 37 C. P. R.	158
 DECISION. See Demurrer, 2 Law Rec.	
 DEED. Date of, unimportant; delivery con- trols, 2 Law Rec.	61
—What shown by date of, and delivery, 2 Law Rec.	61
 DEFAULT. In pleading. By a corporation, 2 Law Rec.	31
—How opened. Copy of proposed answer necessary, 3 Law Rec.	212

	Page
DEFECT OF PARTIES. Must appear from	
complaint, 3 Law Rec.....	60
—Unless it appears from the complaint,	
defendant must show it by proper allegations	
in his answer, 3 Law Rec.	60
 DEFENDANTS, Cross Demands, 1 Law Rec. ..	117
—Adjudication between, 1 Law Rec.....	167
—Incapacity of, 1 Law Rec.	35
—Misjoinder of, 1 Law Rec.	35
—Examination of before trial by co-de-	
fendant, 3 Law Rec.	50
—Unnecessary, 3 Law Rec.	153
 DEFENCES. Partial, 1 Law Rec.	114
—Failure of consideration in bill or draft,	
3 Law Rec.	48
—When based upon a defect of parties,	
must contain necessary allegations to estab-	
lish it, 3 Law Rec.	60
—When separately stated, cannot be	
helped by any other, 3 Law Rec.	102
—Adequate remedy at law must be plead-	
ed, 2 Law Rec.	58
 DELIVERY. See Non-Delivery, 3 Law Rec.	
 DEMAND. In complaint by physician for serv-	
ices, necessary allegations of, 2 Law Rec....	60
 DEMONSTRATIVE LEGACY. Courts are not	
in favor of, 2 Law Rec.	97

	Page
DEMURRER. Costs on, see Costs, 38 C. P. R.	
—Complaint held to be demurrable, 38 C.	
P. R.	403
—Defect of parties defendant must be raised on, 38 C. P. R.	27
—Defense of statute of limitations in action on debt cannot be raised on demurrer, 38 C. P. R.	497
—To complaint as a whole, 38 C. P. R....	476
—See, also Pleading.	
—Purpose for joinder, 1 Law Rec.	69
—Frivolous, 1 Law Rec.	127
—Ultra vires, 1 Law Rec.	193
—Answer served after demurrer not an amended pleading, 2 Law Rec.	28
—Complaint to recover costs and expense of counsel on an undertaking on arrest under section 559 is demurrable, 2 Law Rec.....	1
—Decision should state ground of, 2 Law Rec.	1
—For insufficiency in attachment, when, 2 Law Rec.	25
—Legal capacity to sue. When not sustained, in case of assignee of executor's claim against an estate, 2 Law Rec.....	106
—Misjoinder of causes of action, 2 Law Rec.	38
—Misjoinder of parties, 2 Law Rec.....	191
—New matter is not a denial of allegation in complaint, 2 Law Rec.	9
—Trustee cannot charge estate, when, 2 Law Rec.	37
—When sustained upon all allegations of complaint in an action of interpleader, 2 Law Rec.	119
—To complain in action brought for specific performance and injunctive relief, 3 Law Rec.	10

	Page
—Necessary allegations in complaint against common carrier, 3 Law Rec.	38
—Misjoinder of cause of action, 3 Law Rec.	57
—For insufficiency, 3 Law Rec.	57
—Will not lie to a matter of evidence unnecessarily pleaded, 3 Law Rec.	58
—By plaintiff to separate defenses, 3 Law Rec.	60
—By plaintiff to separate defenses, 3 Law Rec.	61
—Defect of parties defendant, 3 Law Rec.	63
—To counterclaim, 3 Law Rec.	75
—What is admitted by, 3 Law Rec.	86
—No legal capacity to sue, must appear affirmatively on the face of the complaint, 3 Law Rec.	93
—Causes of action improperly united, 3 Law Rec.	99
—By plaintiff to separate defenses only, 3 Law Rec.	102
—To separate defenses, 3 Law Rec.	106
—Beneficiaries under a trust not necessary parties, 3 Law Rec.	110
—By plaintiff to counterclaim set up in answer, test when, 3 Law Rec.	111
—Causes of action improperly united, 3 Law Rec.	115
—Where the complaint is entitled in a court different from summons, 3 Law Rec.	148
—In an action against the sheriff, when, 3 Law Rec.	151
—See Pleading; Joinder of Causes of Action, 37 C. P. R.	

DENIAL. New matter by way of defense is not a denial of allegations, 2 Law Rec. 9

	Page
DEPOSIT. Implies agreement to repay on demand, 3 Law Rec.	58
—On foreclosure bid, 1 Law Rec.	243
 DEPOSITIONS. When interrogatories should be framed in both English and the foreign language, 37 C. P. R.	 247
—See Courts.	
—In an application for a commission to take defendant's testimony, where the moving papers set up the necessary facts, and there was nothing in these papers to believe that the application was not made in good faith, the defendant was entitled to the commission, 39 C. P. R.	 245
—Ex-Parte order for, 1 Law Rec.	243
 DISBARMENT OF ATTORNEY. See Attorney and Client, 37 C. P. R.	
 DISBURSEMENTS. Necessary disbursements, Money for stenographer's minutes, 2 Law Rec.	 8
—Even though used for another purpose a necessary disbursement, 2 Law Rec.	8
 DISCOVERY. Under section 2709-2710, the surrogate has power to examine a person proceeded against, notwithstanding interposition of an answer alleging title to the property in question, 37 C. P. R.	 98
—The court may deny an application for examination of a party before trial when made for delay, 38 C. P. R.	113

	Page
—Plaintiff may examine defendants as to their partnership relation where complaint alleges existence of relation, which allegation is denied by answer, 38 C. P. R.....	325
—Order for examination before trial will be granted when the affidavit therefore meets the requirements of the Code, 38 C. P. R....	372
—Communications between an attorney at law employed as an attorney in fact and his principal in real estate transactions are not privileged (annotated), 38 C. P. R.	90
—The fact that a witness will attend a trial is no answer to application for examination of such party, 38 C. P. R.	113
—Ground for examination of a party before trial held to be sufficient, 38 C. P. R....	113
—The right given to examine a party before trial by section 872 is absolute, 39 C. P. R.	1
—When such right may not be defeated, 39 C. P. R.	1
—When an affidavit for examination of defendant is not sufficient, 39 C. P. R.	33
—The right to refuse to answer because it may incriminate a corporation, is not available, 39 C. P. R.	33
—Examination of corporate officers. Time to assert privilege to refuse to answer, 39 C. P. R.	33
—The rule when the answers may incriminate the party, 39 C. P. R.	49
—Physical examination of plaintiff's person, and for his oral examination, will be permitted when the extent of his injuries is unknown to the defendant, 39 C. P. R.....	68
—Bad faith alone can defeat the right of examination when the requirements of the code and ruled are complied with, 39 C. P.	

	Page
R.	68
—In an action against a carrier for failure to deliver goods on plaintiff's order, the plaintiff should be allowed to inspect such order, 39 C. P. R.	93
—Limitation of examination before trial and after issue joined, 39 C. P. R.	108
—When an order for examination of party before trial was unauthorized, 39 C. P. R. ..	341
—Certain evidence inadmissible, 39 C. P. R.	341
—Discovery, 1 Law Rec.	9
—Petition for, 1 Law Rec.	11, 225
—Affidavit for order, 1 Law Rec.	225
—And inspection, 1 Law Rec.	77
—Agent should make full discovery to his principal, 2 Law Rec.	11
—An examination before trial cannot be had in a single application, 2 Law Rec.	193
—In surrogate's proceedings, answer may be received; object of these proceedings, 2 Law Rec.	161
—Of books, and inspection. Both remedies may be had under section 803 of the Code of Civil Procedure, 3 Law Rec.	30
—Foreign, 3 Law Rec.	117
—Knickerbocker Trust Co., 3 Law Rec. ...	134
 DISCONTINUANCE, Extra allowance, 1 Law Rec.	 40, 211
 DISMISSAL OF CASE. Instance where defendant was not in a position to charge plaintiff with laches in the prosecution of the action, and demand a dismissal, 37 C. P. R.	 315

	Page
——For want of prosecution, when granted, 2 Law Rec.	57
 DISTRICT ATTORNEY. When has power to apply to dismiss indictment, 3 Law Rec.....	95
 DISTRICT COURT. Removal from, 1 Law Rec.	45, 64
——Filing return, 1 Law Rec.	155
——Form of judgment, 1 Law Rec.	206
——Arrest in, 1 Law Rec.	206
 DIRECTORS. Liability of, 1 Law Rec.....	34
 DIVORCE. Rule 31 does not govern the trial by jury in divorce actions, 38 C. P. R.	168
——Defendant in divorce for adultery may have guilt determined by jury, and that right is not waived by noticing the case for trial, 38 C. P. R.	168
——Issue of insanity as defense to action for divorce for adultery should not be submit- ted to jury but be determined by court, 38 C. P. R.	168
——A proceeding for contempt for enforce- ment of judgment for alimony is authorized by statute, 38 C. P. R.	255
——Service of summons and complaint by mail outside of State is insufficient to con- fer jurisdiction to render judgment for sum of money, 38 C. P. R.	377
——Application for judgment, 1 Law Rec.	68
——Referee's report, 1 Law ec.	68
——Form of decree, 1 Law Rec.	64

	Page
—Common law wife, 1 Law Rec.	88
—Service by publication, 1 Law Rec.	180
—Preliminary proof in, 1 Law Rec.....	180
—Publication of summons, 1 Law Rec....	165
—Fraud in marriage, 1 Law Rec.	182
—Duty of wife, 1 Law Rec.	183
—Custody of children, 1 Law Rec.	183
—Disease at marriage, 1 Law Rec.....	182
—Evidence, 1 Law Rec.	223
—Referee's report in, 1 Law Rec.	223
—Reply to answer, 1 Law Rec.	222
—Adultery as defence, 1 Law Rec.	222
—Declarations of defendant, 1 Law Rec.	256
—Proof of adultery, 1 Law Rec.	256
—Vacating by consent, 1 Law Rec.	241
—Wife, dower right, 1 Law Rec.	259
—Wife, not entitled to administer, 1 Law Rec.	259
—Absolute; alimony and counsel fees de- nied when marriage is disputed, 2 Law Rec.	134
—Answer in, defendant must establish de- fense, 2 Law Rec.	211
 DOMICIL OF DECEDENT, 1 Law Rec.	 19
—Law of, for Legatee, 1 Law Rec.	142
 DONATIO CAUSA MORTIS, 1 Law Rec.	 258
 DOWER. Extra allowance, 3 Law Rec.	 52
 DRAFT. Acceptance of, 3 Law Rec.....	 48
—Payment of, secured by Bill of Lading, passes title, 3 Law Rec.	55

E

	Page
EJECTMENT. Receiver in, 2 Law Rec.	44
—The six-year period in an action to recover real property is to be computed with reference to the time of the commencement of the action, 37 C. P. R.	335
—How the value of the “use and occupation” for the six years is computed, 37 C. P. R.	335
 ELEVATED R. R. Benefits offset damage, 1 Law Rec.	89
—Trial by the court, 1 Law Rec.	89
—Extra allowance, 1 Law Rec.	90
—Damages, 1 Law Rec.	89
—Fee and rental, 1 Law Rec.	90
—Expert testimony, 1 Law Rec.	162
—Burden of proof, 1 Law Rec.	162
—Damages, 1 Law Rec.	89, 162
 EMINENT DOMAIN —The rights sought to be taken in a proceeding to condemn land for telephone line should be definitely stated, 38 C. P. R.	122
—A property owner may question the sufficiency of a petition on condemnation proceedings, 38 C. P. R.	122
—Petition in condemnation proceedings held to be insufficient, 38 C. P. R.	122
—The entire damages to be paid to the owners of land sought to be taken by condemnation proceedings should be ascertained in one proceeding, 39 C. P. R.	81

	Page
EMPLOYER'S LIABILITY ACT. The fact that an action is brought under the employer's liability act does not eliminate the question of contributory negligence of plaintiff's intestate and the assumption of obvious risk by him, and both become questions for the jury to determine, 37 C. P. R.....	264
ENCROACHMENTS. What are, 2 Law Rec..	61
ENCUMBERANCE. See Cloud.	
EQUITY ACTION, Jury Trial, 1 Law Rec.....	52
—Waiver, 1 Law Rec.....	249
—Settlement of issues, 1 Law Rec.....	52
—Default. Remedy at law must be pleaded, 2 Law Rec.....	58
EQUITABLE AND LEGAL TITLE UNDER WILL, 1 Law Rec.....	12
EVIDENCE —It is within the discretion of the court to refuse to admit evidence of an account, where copy not furnished as prescribed by Code Civ. Proc., Sect. 531, 38 C. P. R.....	58
—Plaintiff in negligence action cannot take, under a commission, the testimony of a physician who attended her and then object to the reading of the testimony before the jury, upon grounds of privilege, 38 C. P. R.	196
—Refusal of an attorney to answer ques-	

	Page
tions as witness in conspiracy case as tending to incriminate him, is not ground for disbarment, 38 C. P. R.....	217
—See, also, Witnesses.	
—Parole, 1 Law Rec.....	184, 187
—See Attorney and Client.	
—Opprobrious imputations in affidavit for order of arrest not competent, 2 Law Rec...	101
—Taken upon a trial not to be stricken out from case on appeal, 2 Law Rec.....	105
—Testimony to destroy a written instrument may be introduced, but not to vary or contradict, 2 Law Rec.....	153
—Party cannot be required to testify to facts which will convict him. <i>Paine v. Hinsdale</i> , 3 Law Rec.....	20
—Unnecessarily pleaded, a demurrer will not lie to, 3 Law Rec.....	58

EXAMINATION OF PARTY BEFORE

TRIAL. When the petition is verified without the state before a notary public, and his signature is without a certificate as to its genuineness, there is no basis for granting the order, 37 C. P. R.....	365
—The order must direct the time of service, 37 C. P. R.....	359
—Of party before trial, 1 Law Rec.....	9
—Refusal to answer, 1 Law Rec.....	114
—Oral, of plaintiff, 1 Law Rec.....	114, 129
—Of plaintiff before trial, 1 Law Rec....	129
—Of third party, 1 Law Rec.....	200, 216
—And discovery cannot be had together in a single application, 2 Law Rec.....	193
—Of plaintiff, not allowed where answer is a general denial, 2 Law Rec.....	127

	Page
—Not allowed when complaint charges a crime, 2 Law Rec.....	17
—No authority for a party of, for use upon a motion, 3 Law Rec.....	20
—Of adverse parties and inspection of books cannot be had in the same proceeding, 3 Law Rec.....	24
—Of adverse party obtained by affidavit, 3 Law Rec.....	24
—Before trial, of plaintiff, 3 Law Rec...	30
—Of defendant by co-defendant, 3 Law Rec.	50
—Necessity of, must be disclosed, 3 Law Rec.	50
—See Discovery.	

EXCEPTIONS TO REFEREE'S FINDINGS,

1 Law Rec.....	32
—Review of, 1 Law Rec.....	32

EX PARTE BUSINESS, 1 Law Rec..... 8

EXECUTION. Priorities between execution and other claims, 37 C. P. R.....	303
—A trust fund under a will probated before amendment to Code Civ. Proc., Sect. 1391, as to judgments for necessities, is not subject to that statute, 38 C. P. R.....	75
—Receiver in supplementary proceedings should exhaust remedy by execution before sale of interest in certain premises, 38 C. P. R.	362
—Things necessary to consummate a sale pursuant to an execution, 39 C. P. R.....	141
—Sales must be for cash, 39 C. P. R....	141

	Page
—Against the person, 1 Law Rec.....	87
—Against joint defendants, 1 Law Rec...	87
—Stay on appeal, 1 Law Rec.....	29
—Sale of insurance policy, 1 Law Rec...	105
—What property exempt, office furniture of a petroleum broker is not, 2 Law Rec....	65
—When issued in Surrogate's Court, what recitals necessary, 2 Law Rec.....	70
—How issued in a Lloyd's policy, 3 Law Rec.	40
—As against a trustee, 3 Law Rec.....	78
—Body, after five years, what laches, and when may issue, 3 Law Rec.....	121
—Can be no seizure under, after time to return has expired, 3 Law Rec.....	130
—Application to compel return within statutory time, 3 Law Rec.....	141

EXECUTOR. Suit against an executor and trustee for an accounting, where it was claimed that defendant had wrongfully retained part of the income, 37 C. P. R..... 270

EXECUTOR AND ADMINISTRATOR, is bound to account for all the property that comes into his hands as administrator, 37 C. P. R..... 74

—Surrogates have power to examine a person proceeded against, notwithstanding interposition of an answer alleging title to property in question, 37 C. P. R..... 98

—When Surrogate can make no order adverse to the person cited, 37 C. P. R..... 98

—Where in an action by an executor to compel an accounting against a servant, the testimony of the defendant was held ad-

	Page
missable, 37 C. P. R.....	86
—The Surrogate alone has the power to determine the sum of money that should be allowed for funeral expenses, 37 C. P. R....	257
—When action brought in Surrogate's Court to compel payment of a legacy is barred by Statute of Limitations, 37 C. P. R.	309
—See Will.	
—An executor or administrator may bring an action for negligent death as poor person (annotated), 38 C. P. R.....	231, 240
—An administrator with will annexed has no power of sale where power granted to executor was discretionary, 38 C. P. R.....	317
—Petition for appointment held insufficient, 38 C. P. R.....	462
—See also Wills.	
—The right of the successor of a deceased executor to compel an accounting under Code Civil Procedure is not barred until after ten years from the appointment of the new administrator, 39 C. P. R.....	146
—A member of a firm appointed administrator of an estate to which his firm is indebted is chargeable with such indebtedness, 39 C. P. R.....	183
—Revocation of letters, and granting of letters to the successor; authority of the Surrogate's Court, 39 C. P. R.....	14
—The power to remove an executor is given for the protection of estates, and should not be exercised when the purpose is not to protect the estate, 39 C. P. R.....	110
—Removal of trustee, 39 C. P. R.....	110
—Unauthorized investments, 39 C. P. R.	110
—Where in an accounting, a decree charged the administrator with a certain sum, the Surrogate could not set it aside, 39	

	Page
C. P. R.....	310
—Where a contention that a petition filed with the Surrogate should be dismissed, was without merit, 39 C. P. R.....	368
—An executor, when sued, may set up as a counter-claim anything which the decedent could have set up, 39 C. P. R.....	373
—Executor's Discretion, 1 Law Rec.....	20
—And trustee, 1 Law Rec.....	21
—Deceased, accounting, 1 Law Rec.....	21
—Order to sell claims, 1 Law Rec.....	80
—Ancillary, 1 Law Rec.....	80
—Contempt by, 1 Law Rec.....	79
—Account, contesting of, 1 Law Rec.....	140
—Foreign, suit by, 1 Law Rec.....	154
—Ordered to deliver securities, 1 Law Rec.	135
—Accounting by an executor or administrator, for what acts held liable and who represents necessary parties, 2 Law Rec....	81
—Continuing business under a will, liability of individual, 2 Law Rec.....	125
—Has the right to have the court determine whether a creditor is indebted to the estate or not, 2 Law Rec.....	210
—Of an estate as creditor cannot sue himself as executor, 2 Law Rec.....	106
—When discharged from imprisonment, 2 Law Rec.	143
—When he may charge trust estate, 2 Law Rec.	37
—Voluntary accounting of by representative of a deceased personal representative, 3 Law Rec.....	40
—Removal of, 3 Law Rec.....	136
—Power of sale, 3 Law Rec.....	205

	Page
EXECUTRIX. Duties of, in action to quiet title, 3 Law Rec.....	81
 EXEMPTIONS. Pension money of incompetent person is subject to charges for support, (annotated), 38 C. P. R.....	171
—Pension money is exempt under statute from seizure in legal proceedings (annotated), 38 C. P. R.....	171, 186
—Rent is not included in term "Necessaries sold," within Code Civ. Proc., Sect. 1391, which permits judgment creditors to subject to lien wages of debtors, 38 C. P. R.	24
—The statute does not authorize the seizure or interference with any property expressly exempt by law, 39 C. P. R.....	24
 EXEMPT PROPERTY OF JUDGMENT DEBTOR, 1 Law Rec.....	76
 EXTRA ALLOWANCE. In condemnation proceedings, 3 Law Rec.....	46
—In dower actions, 3 Law Rec.....	52
—See Costs, 37 C. P. R.	
—See Discontinuance.	
F	
FEEs OF REFEREE AND STENOGRAPHER, 1 Law Rec.....	85
 FILING OF MAP. Not a cloud or encumbrance on title, 2 Law Rec.....	61

	Page
FINE. Amount of, for contempt, 1 Law Rec....	47
 FOLIOING PAPERS, 1 Law Rec.....	 242
 FORECLOSURE OF MORTGAGE. Sale for deficiency after foreclosure, 37 C. P. R.....	 1
—Section 1628 applies as well to guarantors of the collection of a bond and mort- gage as to guarantors of the payment thereof, 37 C. P. R.....	1
—The failure of the plaintiff to make such guarantors parties to the foreclosure should not operate to their detriment, 37 C. P. R.	1
—Expense of re-sale, 1 Law Rec.....	133
—Parties to, 1 Law Rec.....	116
—Terms of sale, 1 Law Rec.....	186
—Application by party in interest to be made a defendant to be granted without con- dition, 2 Law Rec.....	71
—Failure to purchase not a contempt, 2 Law Rec.	170
—Application to fix security in, 3 Law Rec.	105
—Terms of sale in, 3 Law Rec.....	194
—When purchaser must take deed, must comply with terms of sale, what is contempt in, 3 Law Rec.....	194
—Answer without merit—costs, 3 Law Rec.	9
 FOREIGN CORPORATION. How must do business, 2 Law Rec.....	 176
—Must have certificate to transact busi- ness, 2 Law Rec.....	219

	Page
—How pleaded, 3 Law Rec.....	79
—See Corporations.	
FOREIGN DECEDENT. Claims of creditors,	
1 Law Rec.....	80
—Legatee, law of domicil, 1 Law Rec.....	142
—Probate, 1 Law Rec.....	19
FORM OF ACTION. Conversion, 1 Law Rec..	46
—Equitable relief, 1 Law Rec.....	46
FRAUDULENT TRANSFER, 1 Law Rec... 3,	4
•	
FORM OF UNDERTAKING. See Undertak-	
ing.	
FRIVOLOUS ANSWER. See Answer.	

G

GENERAL RULES OF PRACTICE. Rule 9, 2	
Law Rec.	131, 151
—Rule 10, 2 Law Rec.....	194
—Rule 13, 2 Law Rec.....	102
—Rule 19, 2 Law Rec.....	123
—Rule 37, 3 Law Rec.....	76
—Rule 82, 3 Law Rec.....	50

	Page
GENERAL GUARDIAN. Resignation of, 1	
Law Rec.	78
 GOLD MORTGAGE. Purchase of property, 1	
Law Rec.	63
 GUARDIAN AD LITEM. Affidavit, 1 Law Rec.	11
—Ancillary, 1 Law Rec.....	123
—General, provision of section 2707 of no avail. Remedy by action, 2 Law Rec....	6
—Revocation of letters of, when, 2 Law Rec.	33
—Ad litem, costs, when entitled to, 3 Law Rec.	152
—How paid, 3 Law Rec.....	152
 GUARDIAN AND WARD. Infant without notice is not bound by an ex parte order of the Surrogate approving contract to prose- cute negligence action for the infant for 50 per cent of recovery, 38 C. P. R.....	283
—Surrogate Court is without jurisdiction to settle guardian's accounts where admis- sion of service of citation is made by the mother and the special guardian, but no service made upon infant, 38 C. P. R.....	283
—See, also, Infant.	
 GUARANTEE. Of payment, demand, 1 Law Rec.	95
—Waiver, 1 Law Rec.....	245

H

	Page
HABEAS CORPUS. See Criminal Offenses, 37 C. P. R.	
—Not the proper remedy to contest juris- diction of court to try one on murder charge, 38 C. P. R.	97
—One arrested under a warrant issued by a magistrate who was justified upon the facts before him in drawing an inference of the existence of probable cause to believe that the crime charged had been committed, is not obliged to await an examination, but is entitled to resort at once for his protec- tion to the writ of habeas corpus, 39 C. P. R.	207
 HUSBAND AND WIFE. An agreement to sep- arate, made between husband and wife while living together, pursuant to which they lived apart, is invalid, 39 C. P. R.	168
—Under section 1772 it is within the dis- cretion of the court to require security for alimony, 39 C. P. R.	168
—As tenants by the entirety, 1 Law Rec.	149
 HUSBAND. Ancillary letters to, 1 Law Rec..	19

I

IMPRISONMENT. Discharge from, when granted, 2 Law Rec.	14
 INCOME. Accumulation beyond majority, void, 2 Law Rec.	146

	Page
INCUMBRANCE. Tax lease, 1 Law Rec.....	186
—Filing of a map not a cloud upon title,	
2 Law Rec.....	61
INFANT. Loss of preference. See Trial.	
—Order of sale of property of infant held	
to be void, 38 C. P. R.....	429
—See, also, Guardian and Ward.	
—Defendants, 1 Law Rec.....	12
—Support, 1 Law Rec.....	20
INDICTMENT. Application to dismiss, 3 Law	
Rec.	95
IN FORMA PAUPERIS, 1 Law Rec.....	148, 237
—Duty of attorney in, 1 Law Rec... 106, 107	
—Costs, 1 Law Rec.....	106, 107
—Extra allowance, 1 Law Rec.....	107
INJUNCTION. A court of equity has no inher-	
ent absolute power to grant an interlocu-	
tory injunction, but the authority, if it ex-	
ists, must be found in the Code, 37 C. P. R.	56
—Lessee as necessary party. See Parties,	
38 C. P. R.	
—Proof necessary to procure, 38 C. P. R.	494
—Is proper remedy to compel removal of	
property, 38 C. P. R.....	379
—Pendente Lite, 1 Law Rec.....	1, 188
—Continuance after appeal, 1 Law Rec..	31
—By-laws, 1 Law Rec.....	28
—Temporary, counsel fee, 1 Law Rec....	89
—Dispossess proceedings, 1 Law Rec.....	150
—Damages on, 1 Law Rec.....	175, 176

	Page
—Temporary, damages for, 1 Law Rec...	175
—Pecuniary profit, 1 Law Rec.....	168
—Conversion of property, 1 Law Rec....	188
—After appeal, 1 Law Rec.....	220
—Modification of, 1 Law Rec.....	220
—A temporary injunction will be granted where plaintiff makes out a prima facie case; not always the rule, 2 Law Rec.....	11
—Granted pendente lite only when there is no reasonable doubt, and that plaintiff if injunction is not granted will suffer irreparable injury, 2 Law Rec.....	75
—Pendente lite, when granted, right must be clear and occasion exigent, 2 Law Rec...	88
—Use of name calculated to deceive, 3 Law Rec.	5
—Unlawful combination, right to prosecute a lawful business, 3 Law Rec.....	45
—Not to be granted where the injunction is asked upon no ground other than that the act is criminal, 3 Law Rec.....	45
—Relief granted in action for conspiracy, 3 Law Rec.....	73

INJUNCTIVE RELIEF. When demurrer lies to complaint for, 3 Law Rec.....	10
--	----

INSPECTION OF BOOKS, 1 Law Rec.....	9
—Of box in Safe Deposit Co., 1 Law Rec.	59
—And discovery, 1 Law Rec.....	77
—Under Rule 14, 1 Law Rec.....	11
—Of books of corporation, 1 Law Rec...	66
—What petition must show, 2 Law Rec..	180
—See Discovery, 3 Law Rec.	
—When allowed, 3 Law Rec.....	22
—Not allowed where inquiry is to be used	

	Page
to enable party to attack adversary's case, 3	
Law Rec.	22
—By petition, 3 Law Rec.....	24
INSURANCE COMPANY. The attorney gen- eral may maintain an action against the of- ficers and directors of a life insurance com- pany for losses occasioned by official mis- feasance, 37 C. P. R.	322
—Pleading. What allegations in an ac- tion against directors of an insurance com- pany were sufficient, 37 C. P. R.	322
—See Contract. Service by Publication, 39 C. P. R.	
—Impersonating another, 1 Law Rec....	125
—Policy, sale by execution, 1 Law Rec....	105
INTEREST. On legacy, 1 Law Rec.....	80
INTERLOCUTORY JUDGMENT. Should pro- vide for final judgment, 2 Law Rec.	1
INTERPLEADER. Affidavit for, 1 Law Rec.	214
—Savings banks, 1 Law Rec.	240
—Applicatin for after answer; court has power to act, 1 Law Rec.	89
—In an action of, to be sustained what complaint must show, 2 Law Rec.	119
—In an action upon life insurance policy, 2 Law Rec.	111
—Safe Deposit Co., 1 Law Rec.	59

	Page
INTERROGATORIES. Costs, 1 Law Rec.	64
—Oral, 1 Law Rec.	219
INVENTORY. Of disputed property, 1 Law Rec.	18
—Further inventory. Surrogate can direct, but moving papers must give details, 3 Law Rec.	27
—Must be verified, 3 Law Rec.	27
ISSUE. Date of, is time of service of last placing, 2 Law Rec.	18

J

JOINDER OF CAUSES OF ACTION. Each of two cases is demurred to on the ground that it does not state facts sufficient, and the whole complaint because said causes are improperly united, 37 C. P. R.	369
—Joinder of Causes of Action, 1 Law Rec.	233
—Joint defendants, judgment against, 1 Law Rec.	62

JOINT DEBTOR. Action against partner as, see Partnership, 38 C. P. R.

JUDGMENT. Leave to issue execution after the expiration of ten years from rendition of a judgment in partition. Priorities between execution and other claims, 37 C. P. R. 303

	Page
—Sufficiency of entry to limit time to appeal, see Appeal, 38 C. P. R.	
—Final judgment cannot be entered on demurrer to counterclaim where issues of fact remain to be tried, 38 C. P. R.	419
—Judgment of reversal on appeal by some directors of a corporation in an action to enforce their statutory liability inures to benefit of one who did not appeal, 38 C. P. R....	273
—Defendant should not be allowed to defend default judgment where facts disclose no defense, 38 C. P. R.	379
—Order overruling demurrer to counterclaim must be signed by clerk, 38 C. P. R.	419
—Judgment by default held to be unexcused, 38 C. P. R.	379
—When plaintiff could enter a money judgment over twenty years after rendering the decision, 39 C. P. R.	377
—Form of, by consent, 1 Law Rec.	12
—Debtor, fine, 1 Law Rec.	8
—Form of, commitment of, 1 Law Rec..	8
—Of divorce, form of, 1 Law Rec.	32
—Vacation after appeal, 1 Law Rec.	29
—Against joint defendants, 1 Law Rec..	62
—Application for, 1 Law Rec.	88
—Confession of, 1 Law Rec.	190
—Delay in docket, 1 Law Rec.	183
—Form in District Court, 1 Law Rec....	206
—On referee's report, 1 Law Rec.	216
—Creditor, disputed claim, 1 Law Rec...	238
—Creditor, order to pay, 1 Law Rec....	233
—Recovery on contract and fraud, 1 Law Rec.	233
—Separate, 1 Law Rec.	233
—Action to vacate. See Action Interlocutory. See Interlocutory Judgment Final.	
—Limited to relief demanded; general de-	

	Page
mand "for such other and further relief as to the court shall seem proper" on default limits judgment to what has been specifically demanded, 2 Law Rec.....	198
—Offers of. Not affected, although action is in equity, 2 Law Rec.....	66
—When cannot be opened by assignee, 2 Law Rec.	74

JUDGMENT CREDITOR. See Supplementary Proceedings.

JUDGMENT CREDITOR'S ACTION. Order of arrest. See Arrest.

JUDICIAL SETTLEMENT. Power of Surrogate to construe provisions of a will in, 2 Law Rec. 158

JURISDICTION of Courts in actions against the City of New York, 37 C. P. R..... 372

—To remove trustee, 1 Law Rec..... 140

—Supplementary proceedings, 1 Law Rec. 198

—In supplementary proceedings, 2 Law Rec. 54

—Of the court in an action for the annulment of a marriage, 2 Law Rec..... 106

—Court has none when complaint is entitled in court different from summons, 3 Law Rec. 148

	Page
JURY. Rule 31 is inapplicable in divorce ac- tions, 38 C. P. R.	168
—Defendant in divorce for adultery may have guilt determined by jury, 38 C. P. R....	249
 JUROR. Waiver of, improper conduct, 1 Law Rec.	157
—Improper conduct, 1 Law Rec.....	157
—Charging, damages, 1 Law Rec.....	57
—Disagreement, 1 Law Rec.....	118
—Struck, when reason for, 1 Law Rec...	118
—Withdraw of one, 1 Law Rec.....	62
—Trial, settlement of issues, 1 Law Rec.	52
—Trial, equitable action, 1 Law Rec....	52
—Trial, counterclaim, 1 Law Rec.....	126
—Trial, mandamus, 1 Law Rec.....	162
—Trial, of probate of will, 1 Law Rec...	161
—Trial, waiver, 1 Law Rec.....	253
—Trial by, when right is absolute, 2 Law Rec.	209
—Verdict of when set aside, when defend- ant moves as contrary to weight of evidence and law, 2 Law Rec.....	19
 JUSTICE OF THE PEACE. A justice of the peace has no power to try a case before a jury in an adjoining town, where he has an office, though with the consent of the parties. 39 C. P. R.	95
—Suit by a non-resident in a city jus- tice's court against a resident of an adjoin- ing town, 39 C. P. R.	313
—See Courts, 39 C. P. R.	

L

	Page
LANDLORD AND TENANT. Instance of an insufficient allegation in a petition in summary proceedings, 39 C. P. R.....	134
—Proceedings to dispossess a tenant, holding under a lease of over five years, for his default in payment of taxes and rent, 39 C. P. R.....	5
LACHES. When party is not entitled to examination of adversary before trial because of, 3 Law Rec.....	30
—See Costs.	
 LEASE. Consideration, collateral promise, 1 Law Rec.	124
—Waiver of covenants in, 1 Law Rec.....	179
 LEAVE TO SUE. Instance where the defenses that the judgment was never duly docketed, and that leave of court had not been granted, was immaterial and irrelevant, 37 C. P. R..	93
 LEGACY. Courts favor general legacy as against demonstrative or specific legacy, 2 Law Rec.	97
—When charged upon land, 3 Law Rec..	137
—When paid out of personal property, 3 Law Rec.	137
 LEGAL AND EQUITABLE TITLE UNDER WILL, 1 Law Rec.....	12

	Page
—Expenses, of assignee, 3 Law Rec.....	33
—Lloyd's policy of fire insurance, 3 Law Rec.	1
—See Execution.	

LETTERS OF GUARDIANSHIP. Revocation of. See Guardianship.

—Testamentary. Poverty no ground to refuse, 2 Law Rec.....	152
—See Revocation, 3 Law Rec.....	16

LIBEL. Action for may be maintained by a corporation, 2 Law Rec.....	104
—Arrest in, 2 Law Rec.....	155
—Bill of particulars, to frame answer in, 2 Law Rec.....	41
—What actionable, though uttered without malice, special damages in, 2 Law Rec..	103
—Action for, 3 Law Rec.....	76
—Complaint for, 1 Law Rec.....	127

LICENSE. For sale of liquor, measurement, 1 Law Rec.	120
---	-----

LIENS. Of attorney. See Attorney and Client, 38 C. P. R.	
—On exemptions. See Exemptions, 38 C. P. R.	

LIFE INSURANCE. Policy, complaint, 1 Law Rec.	158
—Meaning of "heirs at law," 1 Law Rec.	111

	Page
LIMITATION OF ACTION. Action by an infant for negligence, 37 C. P. R.....	230
—Necessity of pleading statute. See Pleading, 38 C. P. R.	
—Sufficiency of acknowledgement of debt to take case out of statute (annotated), C. P. R.	497
—Letters written after commencement of action are competent to revive debt (annotated), 38 C. P. R.....	497
—Statute is not available to one who is sued as trustee in action for negligent injuries, but who is subsequently charged individually after an amendment of pleadings (annotated), 38 C. P. R.....	1
—Partner sued as joint debtor not personally served in prior action against firm may plead statute, 38 C. P. R.....	259
—Adverse possession, 1 Law Rec.....	184
—Of claims against decedent, 1 Law Rec.	140
—Section 1913 of the Code which permits an action on a judgment where ten years have elapsed since the taking of the judgment is retroactive and prospective in its application to the judgment, 37 C. P. R.....	287
—When did not apply, 37 C. P. R.....	93
—See Judgment, 39 C. P. R.	
 LIS PENDENS. Authority of the Court in motion to cancel Lis Pendens, 37 C. P. R.....	 137
—Instance of where a lis pendens <i>was</i> not permitted under section 1670, 39 C. P. R...	315
—After appeal, 1 Law Rec.....	157
—Cancellation of, 1 Law Rec.....	94
—Ceases to be a statutory notice to purchasers when cancelled, 2 Law Rec.....	217

	Page
—Cancellation of, in mechanic's lien, 2 Law Rec.	47
—When owner is entitled to a cancellation of, 2 Law Rec.	47
—Motion to cancel, 3 Law Rec.	47
—Cancellation of mechanic's lien, 3 Law Rec. .	54
—Cancellation of, 3 Law Rec.	126
—Cancellation of, in action to recover damages for examination of title; when granted, 3 Law Rec.	212
 LONG ACCOUNT. Claim of attorney involving same may be referred, 3 Law Rec.	 25
 LUNACY. Adjudication of, 1 Law Rec.	 92
 LUNATIC. Commitment of, 1 Law Rec.	 92
—Action against cannot be brought without application to Court, 3 Law Rec.	21

M

MANDAMUS. Contempt, 1 Law Rec.	254
—Preferred cause, 1 Law Rec.	157
—Peremptory and alternative, 1 Law Rec.	166
—Trial of, 1 Law Rec.	162
—When a peremptory writ granted, only a question of law is involved, 2 Law Rec.	73
 MAP. Filing of not a cloud or incumbrance on title, 2 Law Rec.	 61

	Page
MARKETABLE TITLE Parole evidence, 1	
Law Rec.	184, 187
 MARRIAGE. Motion for physical examination in annulment action may be denied upon waiver of right of secrecy, 38 C. P. R.	134
—Marriage between woman and man who has a wife living is void and a decree of an- nulment should be procured, 38 C. P. R.	328
—Action for breach of promise may be brought by woman whose marriage to third party is void, 38 C. P. R.	328
—Annulment of, physical disability; ex- amination of the person granted; jurisdic- tion of the court in, 2 Law Rec.	196
 MASTER AND SERVANT. Action for per- sonal injury causing death, 37 C. P. R.	51
—See Employer's Liability Act.	
—Liability of executor continuing busi- ness under a will, individual, 2 Law Rec. ...	125
 MAXIM. The maxim, "the thing speaks for it- self," only applies where the accident could not have happened except through defect- iveness of an appliance, 37 C. P. R.	51
 MECHANIC'S LIEN. It is proper, in an action to foreclose a mechanic's lien, for the referee to award costs out of the amount due the con- tractor, 39 C. P. R.	308
—Action to foreclose, 1 Law.	74
—Discharge of, 1 Law Rec.	71
—Complaint on bond, 1 Law Rec.	72

	Page
—Complaint, 1 Law Rec.....	71
—Parties defendant, 1 Law Rec.....	220
—Service of notice, 1 Law Rec.....	226
—Bond to discharge, 1 Law Rec.....	93
—When a bond is given, action affecting real estate abates, 2 Law Rec.....	47
—Cancellation of lis pendens, 2 Law Rec.	47
—Notice to commence action, 3 Law Rec.	42
—When action commenced too late, 3 Law Rec.	42
—Cancellation of lis pendens, 3 Law Rec.	54
—Where must be verified, 3 Law Rec....	122
—Statements in lien, 3 Law Rec.....	122
—Payment of by notes, 3 Law Rec.....	122
—When can be filed, 3 Law Rec.....	122
—Acceptance of a note does not deprive right to file, 3 Law Rec.....	135
—When misstatement invalidates, 3 Law Rec.	140

MINORS, CUSTODY AND TUITION OF, 1

Law Rec.	84
---------------	----

MISJOINDER. Of cause of action, when. Sec-

tion 484 Code Civ. Pro., 2 Law Rec.....	38
—In action for conspiracy, 3 Law Rec...	73
—Of causes of action, 3 Law Rec.....	99
—Different kinds of relief asked for in complaint, not, 3 Law Rec.....	99
—Of causes of action. See Demurrer.	

MISTRIAL. There is no mistrial, because the trial judge becomes disqualified to act on the motion to set aside the verdict and for new trial, 37 C. P. R.....

380

	Page
MISNOMER OF DEFENDANT, 1 Law Rec.	187
MONUMENT, ERECTION OF, 1 Law Rec. 20,	80
MORTGAGES. In foreclosure action proof required by Code Civ. Proc., Sect. 1629, need not be made where defendant served answer, 38 C. P. R.	407
—Proof held to show that no action had been brought to collect debt, 38 C. P. R.	407
—See "Executors and Administrators," Foreclosure of Mortgage.	
—On leasehold, interest, allowance, 1 Law Rec.	113
—Satisfaction of, on motion, 1 Law Rec. .	134
MOTION. To advance cause on calendar, when denied, 2 Law Rec.	47
—On papers, 1 Law Rec.	9
—Litigated, 1 Law Rec.	8
—New matter on renewal, 1 Law Rec.	50
—Re-Argument of, leave to renew, 1 Law Rec.	50
—Leave to renew, 1 Law Rec.	92
—For new trial, 1 Law Rec.	95, 102
—To satisfy mortgage, 1 Law Rec.	134
—For new trial, new evidence, 1 Law Rec.	160
—For new trial after appeal, 1 Law Rec. .	160
—Papers, recital of, in order, 1 Law Rec. .	179
—Place of, 1 Law Rec.	164
—To substitute assignee, 1 Law Rec.	240
—To change place of trial on ground, "affecting an estate, right, title, lien, or other interest in real property," 3 Law Rec.	9

	Page
—To confirm referee's report, premature, when, 3 Law Rec.....	3
—To embrace in decree of Surrogate's Court a decision of the Surrogate upon a trial of a question of fact, 3 Law Rec.....	165
 MUNICIPAL COURTS.	
Appeals from, 37 C. P. R.	84
—Section 724 of the Code does not apply to a motion to set aside a Municipal Court judgment which was entered by mistake of the court who directed the same, and was not the result of the error of either party, 37 C. P. R.	311
—Jurisdiction of, 37 C. P. R.....	372
—See "Attorney and Client."	
 MUNICIPALITY.	
Action against, notice a condition precedent, must be sufficient, 2 Law Rec. .	205
 N	
NECESSARY DISBURSEMENTS. See Disbursements.	
 NECESSARY PARTIES.	
Without whom no decree at all can be effectually made, 3 Law Rec. .	63
 NEGLIGENCE.	
Action for personal injury causing death, 37 C. P. R.....	51

	Page
—Apartment house owner, although trustee for another, is liable to prospective tenant who fell from unguarded stairway in dark, 38 C. P. R.....	1
—Contributory, 1 Law Rec.....	52
—Allegations of, 1 Law Rec.....	16
—Of servants of corporation, 1 Law Rec.	149
—As counterclaim, 1 Law Rec.....	126

NEW MATTER. See Denial, 2 Law Rec.

NEW TRIAL. Where motion to set aside verdict and for new trial is refused, 37 C. P. R.	380
—See Trial, 38 C. P. R.	
—A new trial is properly granted on the ground of newly discovered evidence in an action for work and labor, 39 C. P. R.....	131
—An order for lies within the discretion of the Court, 39 C. P. R.....	131
—Complaint after order, 1 Law Rec.....	61
—Motion for, 1 Law Rec.....	95, 102, 160
—On minutes, 1 Law Rec.....	241
—Motion for will not be granted to enable the defeated party to impeach the credibility of the witnesses of his adversary, 2 Law Rec. .	201
—When a motion for, and to set aside verdict on ground of being excessive, granted, 2 Law Rec.....	213
—When denied, 2 Law Rec.....	28

NEW YORK CITY, Mechanics' Lien, 1 Law Rec.	71
—Claims against, 1 Law Rec.....	61
—Preferred causes, 1 Law Rec.....	98

	Page
—Action for personal injuries, 1 Law Rec.	96
—Filing notice of claim, 1 Law Rec.....	96
—Statutory limitation of action, 1 Law Rec.	96
NON-DELIVERY. Excuse for a necessary allegation in complaint against common carrier, 2 Law Rec.....	38
NON-SUIT. Contributory negligence, 1 Law Rec.	52
NOTE OF ISSUE, Date, 1 Law Rec.....	99
—Nunc pro tunc, 1 Law Rec.....	221
—Filing of, 1 Law Rec.....	244
—Must be for same term as notice of trial. May be amended nunc pro tunc, 2 Law Rec.	200
NOTICE OF APPLICATION, &c., 1 Law Rec.	13
NOTICE OF APPEAL. Subscribed by attorneys not appearing, ineffectual, 3 Law Rec.	16
NOTICE OF APPEARANCE. When service necessary upon obtaining consent to an extension of time, 3 Law Rec.....	127
—Not necessary when extended by order of Court, 3 Law Rec.....	127

Page

NOTICE. Of pendency of action. See *Lis Pendens*.

NOTICE OF TRIAL. After amended answer, when necessary, 2 Law Rec..... 47

—And note of issue must be for same term, 2 Law Rec..... 200

—Failure to serve, how waived, 2 Law Rec. 202

—When not necessary, 1 Law Rec..... 161

—1 Law Rec..... 221, 244

—After amendment, 1 Law Rec..... 255

—Retaining same without objection, 3 Law Rec. 65

—How affected by amendment to complaint, 3 Law Rec..... 69

O

OFFICERS AND DIRECTORS OF CORPORATION. See *Insurance Company*, 37 C. P. R.

OFFICERS. See “*Corporations*,” 39 C. P. R.

ORAL CROSS EXAMINATION, 1 Law Rec... 219

ORDER—To Sell Claims, 1 Law Rec. 80

—To show cause, 1 Law Rec..... 219

—Appeal, new trial, 1 Law Rec..... 241

—For service by mail, 1 Law Rec..... 224

	Page
——Contents of. Must conform to decision, 2 Law Rec.....	18
——Of arrest. See Arrest.	
——Of publication. Of summons and complaint, 3 Law Rec.....	76
——To show cause. Returnable after the expiration of eight days, 3 Law Rec.....	52
——When cause of dispensing with eight days' notice of motion not disclosed, defective, 3 Law Rec.....	135
 ORIGINAL PLEADING. What is, 2 Law Rec.	 28
 OPEN COMMISSION. Will not issue to examine "such witnesses" as may be presented by the defendant, 2 Law Rec.....	 5

P

PARTIES TO ACTION. Changing the issue, 37 C. P. R.....	93
——Party not summoned in former action, 37 C. P. R.....	93
——Neglect to serve all parties, 37 C. P. R.	299
——Four are "many persons," within Code Civ. Proc., Sect. 488 (annotated), 38 C. P. R.	476
——Code Civ. Proc., 723, is inapplicable in a case where plaintiff sued one member of a firm in tort and afterwards desired to bring in other members, 38 C. P. R.....	85
——Defect of parties defendant for failure to join one claimed to be liable must be raised by demurrer where fact of complaint	

	Page
does not disclose defect, 38 C. P. R.....	27
—Lessee necessary party in action for injunctive relief against lessor, and may be brought in by amendment, 38 C. P. R.....	459
—Owners in severalty of water rights in race have such common interest that one may sue for all for wrongful cutting off of supply, 38 C. P. R.....	476
—Examination of. See Examination.	
—Bringing in third parties in action to recover money judgment, 39 C. P. R.....	74
—See "Trusts."	
—To foreclosure of mortgage, 1 Law Rec.	116
—Motion to bring in defendants, 1 Law Rec.	152
—Non-joinder of defendants, 1 Law Rec.	152
—A party in interest, defendant can be brought in on his application, 2 Law Rec....	71
—Beneficiaries not necessary, 3 Law Rec.	110

PARTITION. Notice to creditors, how published, 3 Law Rec.....	25
—Action for, when prior action pending in another Court, 3 Law Rec.....	61
—See Rule 31, 3 Law Rec.....	85
—When a foreign will is a defense, 3 Law Rec.	149
—Demurrer, 3 Law Rec.....	173
—Motion to be relieved from purchase in, 3 Law Rec.....	197
—What is encroachment, 3 Law Rec.....	197
—Compensation for diminution of title in, 3 Law Rec.....	197
—Husband and wife, 1 Law Rec.....	149
—Ownership under will, 1 Law Rec.....	130

	Page
PARTNERSHIP. A receiver not appointed in action for dissolution, unless satisfactory proof of the existence of the partnership is presented, 2 Law Rec.....	73
—See Injunction.	
—Interest in real property—when, 3 Law Rec.	1
—As between parties when real estate is considered as personality, 3 Law Rec.....	1
—Action for dissolution of, and an accounting, 3 Law Rec.....	75
—Action may be brought against co-partner as joint debtor not personally served in prior action against partnership to charge him with balance unpaid on judgment against firm, 38 C. P. R.....	259
—Receiver of firm property during action for accounting should be denied, 38 C. P. R.	494
 PAYMENT —Into Court, 1 Law Rec.	214
—By specific sum, contempt, 1 Law Rec.	79
—Necessary allegation of in complaint against common carrier, 3 Law Rec.....	38
—See Promissory Note.	
 PENSION MONEY. See Exemption.	
 PERMISSION TO SELL CLAIMS, 1 Law Rec.	80
 PERSONAL AND REAL ESTATE OF DECEDENT, 1 Law Rec.....	84

	Page
PERSONAL INJURY , sidewalk, 1 Law Rec....	256
Injuries, liability of executor continuing business under a will, that of master and servant, 2 Law Rec.....	125
PHYSICIAN . Necessary allegations in com- plaint by, 2 Law Rec.....	60
—See Witness, 39 C. P. R.	
PHYSICAL EXAMINATION . Power of Court to order physical examination for personal injury, 37 C. P. R.....	203
—Purpose of such examination, 37 C. P. R.	203
—How order to be served, 37 C. P. R....	203
—Who may be present at, 37 C. P. R....	203
—Motion for physical examination may be denied upon waiver of right of secrecy, 38 C. P. R.....	134
PLACE OF TRIAL . Cannot be changed by as- signee upon ground that he is a public of- ficer, 2 Law Rec.....	74
—Change of, 3 Law Rec.....	3
PLAINTIFF . Address of must be given, 1 Law Rec.	3
—Examination of, before trial, 1 Law Rec.	114
PLEADING . An order which authorizes an “amended and supplemental” complaint is irregular, 37 C. P. R.....	78

	Page
—Such pleading is unknown to the Code, 37 C. P. R.....	78
—Demurrer. Various questions which may be raised on a demurrer, 37 C. P. R....	131
—Amended answer. Excusable failure to serve amended answer pursuant to order and to pay motion costs, 37 C. P. R.....	146
—Where a pleading is so indefinite and uncertain that its meaning is not apparent, held that the definiteness and certainty are open to criticism, 37 C. P. R.....	188
—Motion to dismiss complaint on ground of insufficient facts, 37 C. P. R.....	235
—When denial of such motion is open to review, 37 C. P. R.....	235
—Asking relief by injunction restraining defendant from acting as general manager under section 603, 37 C. P. R.....	250
—Change of cause of action. The Court has power to direct an amendment of a complaint, although it changes the cause of action and substitutes another belonging to a different class, where the result to be reached is the same, and the amendment does not affect any substantial purpose of the action, 37 C. P. R.....	297
—Answer. Service of answer on intervening defendants, 37 C. P. R.....	359
—Effect of statute of limitations upon amendment of pleading. See Limitation of Actions, 38 C. P. R.	
—A summons misdescribing a corporation defendant may be amended so as to charge it in its proper name (annotated), 38 C. P. R.....	23
—A summons and complaint in an action for negligent injuries against a defendant as trustee may be amended under Code Civ.	

	Page
Proc., Sect. 723, so as to charge the defendant individually (annotated), 38 C. P. R....	1
—Answer denying on information and belief any knowledge sufficient to form a belief is not good, 38 C. P. R.....	367
—Cause of action cannot be sustained upon allegations in answer denied in reply, 38 C. P. R.....	145
—Defendants cannot be joined in equity action on theory of alternative relief, 38 C. P. R.	145
—A complaint may ask for both legal and equitable relief, 38 C. P. R.....	142
—Cause of action for damages for breach of contract and one for fraud in inducing contract are not inconsistent, 38 C. P. R....	361
—Causes of action for conversion and for goods sold and delivered should be separately stated and numbered, 38 C. P. R.....	371
—Complaint alleging that defendants assaulted plaintiff, and at same time in presence of various persons uttered defamatory words concerning her, states two causes of action which cannot be united, 38 C. P. R..	71
—Complaint containing cause of action on contract will not be dismissed because of insufficiency of proof to sustain allegations in tort, 38 C. P. R.....	363
—Complaint stating cause of action against one party will not be dismissed as to him because no action stated against other defendant, 38 C. P. R.....	145
—Code Civ. Proc., Sect. 545, authorizing striking out irrelevant and redundant matter, is inapplicable to complaint setting out common law action for negligent injuries and one under employer's liability act, 38 C. P. R.....	374

	Page
—Plaintiff's non-residence must be pleaded to be available as defense, 38 C. P. R.	367
—In action to compel performance of contract to convey real estate, plaintiff need not allege that agreement was in writing, 38 C. P. R.	90
—Defense of statute of limitations in action on debt cannot be raised on demurrer, 38 C. P. R.	497
—Unnecessary to plead facts to take case out of statute of limitations, 38 C. P. R.	497
—Issue of non-residence is not raised by general denial where plaintiff unnecessarily alleged her residence, 38 C. P. R.	367
—Members of a committee empowered to liquidate affairs of corporation may verify pleadings, 38 C. P. R.	383
—An allegation in an answer to a complaint against a married woman for goods furnished her, stating that they had been sold on the credit of her husband who had paid a portion of the price, sets up a new defense requiring a reply, under Code Civ. Proc., Sect. 516, 38 C. P. R.	51
—It is not necessary, under Code Civ. Proc., Sect. 531, to plead the items of an account, but a copy thereof may be demanded, 38 C. P. R.	58
—It is an error, on motion before trial, to strike out allegations in action for negligent death as to money spent for care and funeral expenses; question should be raised by demurrer, 38 C. P. R.	83
—It must appear that a prior action is pending between the same parties for the same cause to make plea in abatement available on demurrer, 38 C. P. R.	105

Page

—Pendency of action to recover payment for services as architect cannot be pleaded in abatement of a subsequent action on quantum meruit, 38 C. P. R.....	105
—Release of cause of action executed after case noticed for trial can only be interposed as defense by leave of court, 38 C. P. R.	112
—No error to deny motion to amend answer where action has been at issue for some time and motion not made until case about to be called, 38 C. P. R.....	407
—Judgment requiring separation of actions is authorized, without leave to amend, 38 C. P. R.....	403
—Right to amend complaint as of course not exhausted by serving amended complaint after withdrawal of motion to compel amendment, 38 C. P. R.....	426
—Demanded for treble damages must be made to be recoverable (annotated), 38 C. P. R.	437
—Defendant is entitled to 20 days in which to serve an amended answer after service of amended complaint, 38 C. P. R...	229
—Verified answer is not required where an unverified amended complaint is served after a verified complaint, 38 C. P. R.....	229
—Process issued out of court of record must be subscribed by the attorney, 38 C. P. R.	217
—Only one cause of action held to be stated in complaint, 38 C. P. R.....	142
—Complaint held not to be set forth a cause of action, 38 C. P. R.....	145
—See also Demurrer, 38 C. P. R.	
—A paragraph of an answer containing a good denial should not be stricken out as redundant or irrelevant, 39 C. P. R.....	118

	Page
—Separate stating and numbering, 39 C. P. R.	118
—A retainer signed by one who had suffered personal injuries, at the instance of an unknown person who asked him if he needed money, and who promised to see him again, is not invalid, 39 C. P. R.	121
—A motion to make a complaint more definite, or, in the alternative, for a bill of particulars, are improperly joined, 39 C. P. R.	162
—A motion for bill of particulars made before answer is premature, 39 C. P. R.	
—What is the controlling consideration in deciding whether a complaint should be made more definite, 39 C. P. R.	162
—Admissions in a verified counter-claim are admissible in evidence against all the defendants joining in the answer, 39 C. P. R.	171
—A motion to serve an "amended and supplemental answer" must be denied, as no such pleading is recognized by the Code, 38 C. P. R.	206
—A condition precedent may be alleged as having been "duly performed," but where controverted, must be known on the trial, 39 C. P. R.	283
—Motion to separate a denial from a defense of new matter was improperly denied, 39 C. P. R.	251
—A motion to correct a prayer for relief is one to amend the complaint, 39 C. P. R.	255
—Insufficient allegations in a complaint in an action on a bond given as security for a note, 39 C. P. R.	10
—In an answer to an action on a note, allegations stating conclusions of law are insufficient, 39 C. P. R.	26
—Fraudulent disposition, 1 Law Rec.	252

	Page
—Written contract, 1 Law Rec.....	251
—Another action pending, 1 Law Rec...	248
—See Amended Pleading.	
—See Defense, Equity.	
—Complaint by physician to recover for services, necessary allegations, 2 Law Rec..	60
—Default in. See Default.	
—Of foreign law—what must be pleaded to establish a complete cause of action, 3 Law Rec.	86
 PLEDGE. When held as trustee, 2 Law Rec...	 30
 POOR PERSON—Application to sue as, may be made any time while action is pending, 2 Law Rec.	 65
—Liability for costs, see Costs.	
—The adverse results of previous trial may be considered on merits of plaintiff's right to sue as poor person, 38 C. P. R.	231
—Failure to serve copy of order to sue as poor person does not defeat right, 38 C. P. R.	130
—Executor or administrator may sue as poor person (annotated), 38 C. P. R..	231, 240
 POSTPONEMENT OF TRIAL, 1 Law Rec.....	 239
 POWER OF ALIENATION. Suspension of, 3 Law Rec.	 91
 POWER OF SALE. See Executor.	

	Page
PRACTICE. Confirmation of Referee's Report,	
3 Law Rec.....	3
 PREFERENCE. See Trial.	
—Of wages of workmen, 1 Law Rec.....	258
—Motion for, as a matter of right, 3 Law Rec.	134
 PREFERRED CAUSES, 1 Law Rec.....	5
—Premature application, 1 Law Rec.....	44
—Laches, 1 Law Rec.....	44
—Separate trials of issues, 1 Law Rec....	40
—Trial of counter-claim, 1 Law Rec.....	44
—Executors and trustees, 1 Law Rec.....	43
—Service of notice, 1 Law Rec.....	43
—Discretionary, 1 Law Rec.....	42
—Extraneous facts, 1 Law Rec.....	42
—Receivers action, 1 Law Rec.....	42
—Personal services, 1 Law Rec.....	64
—Action against the state, 1 Law Rec....	98
—Action against N. Y. City, 1 Law Rec..	98
—Motion to restore, 1 Law Rec.....	112
—Remand of, 1 Law Rec.....	112
—Several causes of action, 1 Law Rec....	108
—What are, 1 Law Rec... 107, 109, 110,	111
—Notice trial in, 1 Law Rec.....	108
—Waiver of right to, 1 Law Rec.....	108
—Service of order of, 1 Law Rec.....	107
—Action on judgment, 1 Law Rec.....	158
—Life insurance policy, 1 Law Rec.....	158
—Mandamus, 1 Law Rec.....	157
—Discretion, 1 Law Rec.....	162
—Order for trial, 1 Law Rec.....	161
—Work, labor and services, 1 Law Rec..	224
—Administrator, 1 Law Rec.....	224
—Equity case, 1 Law Rec.....	223

	Page
—Waiver, 1 Law Rec.....	5, 254
—Damages on contract, 1 Law Rec.....	253

PRINCIPAL AND AGENT. Communications	
between attorney employed as attorney in fact are not privileged (annotated), 38 C. P. R.	90
—See Discovery, 2 Law Rec.	

PROCESS. Attorney's failure to give street address in summons is not jurisdictional and service will not be set aside where defendant knew address and retained summons (annotated), 38 C. P. R.		345
—Issued out of a court of record must be subscribed by the attorney, 38 C. P. R.		217
—Service of original answer by mail does not entitle defendant to double time within which to serve amended answer (annotated), 38 C. P. R.		447
—Grounds held sufficient for order for substituted service, 38 C. P. R.		379

PROFESSIONAL SERVICES. Assignee not allowed claim for same for distributive share of surplus, 3 Law Rec.		33
--	--	----

PROHIBITION. An objection to the sufficiency of the papers upon which a writ was granted may be taken in the return, or presented at a special term of the Court before the return day, 39 C. P. R.		258
---	--	-----

	Page
PROMISSORY NOTE. Place of payment not essential to validity, 3 Law Rec.....	106
——When allegation of delivery in complaint, 3 Law Rec.....	180
——Endorsement of, 3 Law Rec.....	180
 PROTECTIVE UNIONS. By-laws of, 1 Law Rec.	 28
 PUBLIC OFFICER. Action against, 1 Law Rec. 136	
——Assignee is not, 2 Law Rec.....	74

Q

QUO WARRANTO. The objection to such proceedings to test the defendant's title to office of Mayor, how properly raised, 39 C. P. R.	178
——Action brought at the discretion of the Attorney General, 39 C. P. R.....	178

R

REAL PROPERTY. Action against defendant to determine the title to real property, 37 C. P. R.	212
——See Ejectment.	
——And personal of decedents, 1 Law Rec..	84
——Sale of decedents, 1 Law Rec.....	139
——Power of surrogate, 1 Law Rec.....	171
——Action by vendee to annul contract for, 2 Law Rec.....	61

	Page
—Are assets when under contract of sale at time of decedent's death, 2 Law Rec.....	165
—Personal property when purchased with partnership funds, 2 Law Rec.....	94
—Partnership interest in—when, 3 Law Rec.	1

RECEIVER. Appointment of, as affecting lien of attorney. See Attorney and Client, 38 C. P. R.

—See "Exemption."	
—Suits by, leave to sue, 1 Law Rec.....	88
—In foreclosure cases, 1 Law Rec.....	114
—Permission to sue, 1 Law Rec.....	136
—Assignment of rents, 1 Law Rec.....	153
—In foreclosure, 1 Law Rec.....	153
—In partition, 1 Law Rec.....	149
—Costs, accounting, 1 Law Rec.....	192
—Order appointing, 1 Law Rec.....	213
—Must pay rent, 1 Law Rec.....	222
—Resisting, 1 Law Rec.....	227
—Dispossession of, 1 Law Rec.....	229
—Compelled to take possession, 1 Law Rec.	228
—Leave to sue, 1 Law Rec.....	228
—Power to collect rents, 1 Law Rec.....	227
—Stock on hand, 1 Law Rec.....	27
—Continuing business, 1 Law Rec.....	27
—Corporation, 1 Law Rec.....	27
—Foreclosure, 1 Law Rec.....	248
—Corporation, attachment, 1 Law Rec...	243
—Form of order appointing, in supplementary proceedings. Where filed, 2 Law Rec.	69
—In an action for dissolution of partnership, when, 2 Law Rec.....	73

	Page
—In ejectment suit, pendente lite, 2 Law Rec.	44
—Supplementary proceedings, when not appointed, 2 Law Rec.	45
—Whether one can be appointed in supplementary proceedings under a Lloyd's policy of fire insurance, 3 Law Rec.	40
REFEREE. Power to compel answer, 1 Law Rec.	97
—To take testimony, 1 Law Rec.	85
—Contempt before, 1 Law Rec.	97
—Report of, objections to, 1 Law Rec.	173
—Oath of, 1 Law Rec.	222
—Report, form of judgment, 1 Law Rec.	216
—Report, setting aside, 1 Law Rec.	17
—Mistrial before, 1 Law Rec.	17
—Report in divorce, 1 Law Rec.	68
—Fees, two reports, 1 Law Rec.	247
—Supplementary proceedings, 2 Law Rec.	54
—Once having lost his power cannot recover it to issue subpoena, 3 Law Rec.	37
—Motion to set aside report of, 3 Law Rec.	67
—Fees of, what reasonable amount, 3 Law Rec.	192
—Motion to compel to pay over moneys in foreclosure, 3 Law Rec.	194
—Authority in foreclosure, 3 Law Rec.	194
REFEREE'S REPORT. Confirmation of, 3 Law Rec.	3
REFERENCE. In an equitable action for specific performance of a contract and for an	

	Page
accounting, a reference should not be ordered, 38 C. P. R.....	351
—Instance of where the referee was not bound to take testimony appearing irrelevant, 39 C. P. R.....	295
—Validity of a referee's report, 39 C. P. R.	265
—Time for delivering the report, 39 C. P. R.	51
—Jurisdiction of referee. Termination of, 39 C. P. R.....	51
—In Surrogate's Court, 1 Law Rec.....	143
—Order of, 1 Law Rec.....	173
—Damages on injunction, 1 Law Rec....	176
—Attorney's lien, 1 Law Rec.....	76
—For deposition, 1 Law Rec.....	129
—Compulsory; long account; attorney's bill for services, 2 Law Rec.....	163
—See Compulsory Reference.	
—Compulsory, when not allowed, 3 Law Rec.	24
—May be had upon a claim of an attorney, 3 Law Rec.....	25
 REFERRED ACCOUNTING, 1 Law Rec.....	 126
 RELEASE, UNDER SEAL, 1 Law Rec.....	 16
 RELIGIOUS CORPORATION, LIABILITY, 1 Law Rec.	 74
 REMOVAL OF ASSETS, 1 Law Rec.....	 19
—From District Court, 1 Law Rec.....	64

	Page
RENT, ACTION FOR COUNTERCLAIM, 1	
Law Rec.	126
 REPLEVIN. Plaintiff in replevin must prove the allegations of his complaint, although no order of arrest granted, 38 C. P. R.	190
—When title passes, 3 Law Rec.	55
—Requisites of affidavit, 3 Law Rec.	215
—When there are several requisitions, 3	
Law Rec.	216
—Property in custodia legis, 3 Law Rec.	216
 REPLY, Counterclaim of Negligence, 1 Law Rec.	126
—To counterclaim, 1 Law Rec.	45
—In divorce. Defendant cannot stand upon one portion of, 2 Law Rec.	211
—To new matter, 3 Law Rec.	136
 REPORT OF REFEREE. Motion to set aside, 3 Law Rec.	67
 REPORT OF CORPORATION, 1 Law Rec.	34
 RE-SALE ON FORECLOSURE, 1 Law Rec.	133
 RESIDENCE. When attorney compelled to disclose client's, 2 Law Rec.	57
 RETURN FROM DISTRICT COURT, 1 Law Rec.	155

	Page
REVOCAION OF LETTERS OF ADMINISTRATION, 1 Law Rec.....	77
—Of letters testamentary, 1 Law Rec....	144
—Of former will, 1 Law Rec.....	169
—Of letters of guardianship, 2 Law Rec.	33
—Of letters testamentary, when, under Section 2,685 of the Code, 3 Law Rec.....	16
 RULES, Second Department, 1 Law Rec.....	 17
—1, special, 1 Law Rec.....	8
—3, 1 Law Rec.....	111, 161
—5, special, 1 Law Rec.....	8
—6, special, 1 Law Rec.....	98, 109
—9, 1 Law Rec.....	38
—11, 1 Law Rec.....	43
—14, 1 Law Rec.....	11
—15, general, 1 Law Rec.....	9
—18, 1 Law Rec.....	242
—19, 1 Law Rec.....	242
—24, 1 Law Rec.....	48, 99
—31, 1 Law Rec.....	52
—34, 1 Law Rec.....	118, 208
—36, 1 Law Rec.....	107, 109
—37, 1 Law Rec.....	217
—77, 1 Law Rec.....	88
—78, 1 Law Rec.....	88
—See Amendments, Rule 32, 2 Law Rec.	

S

SALE. Of decedent's real estate, creditors named in the petition must be cited. When notice to creditors to present claims has not been published or the time to present them has not expired citation must be directed

	Page
generally to all other creditors as well as the creditors named, 2 Law Rec.....	124
—Of decedent's real estate, when petition not granted, creditor's remedy, 2 Law Rec..	181
—Of real estate, action by vendee to an- nul contract for, 2 Law Rec.....	61
—Action to recover for a remote conse- quence of, 3 Law Rec.....	80
 SAVINGS BANK DEPOSITS, 1 Law Rec.....	 132
—Claims against, 1 Law Rec.....	240
 SECOND DEPARTMENT RULES, 1 Law Rec.	 17
 SEPARATION. Action for, counsel fees, ali- mony, when not allowed, 2 Law Rec.....	 142
—Action for, 3 Law Rec.....	70
 SECURITY TO PAY FINE, 1 Law Rec.....	 167
—For costs, bad faith of action, 1 Law Rec.	165
—For costs, counterclaim, 1 Law Rec....	214
—For costs by administrator, 1 Law Rec.	221
—For costs, justification, 1 Law Rec.....	246
—See Costs.	
 SERVICE BY PUBLICATION. The "sub- ject matter" in a suit by an assignee of a life policy is personal property, and a non- resident defendant may be served by publi- cation, 39 C. P. R.	 317

	Page
SERVICE of Summons, Affidavit, 1 Law Rec..	12
—Of summons on infant, 1 Law Rec.....	12
—On one defendant, 1 Law Rec.....	62
—Of order under S. 1778, 1 Law Rec....	199
—By mail, of notice of motion, 1 Law Rec.	224
—By mail, registered letter, 1 Law Rec.	196
—Out of the state, 1 Law Rec.....	217

SET-OFF AND COUNTER-CLAIM. See "Ac-
tion," "Executors and Administrators,"
38 C. P. R.

SETTLEMENT OF ORDER BY MOTION, 1
Law Rec. 179

SHERIFF, Indemnitors Substituted, 1 Law
Rec. 37
 —To open box in safe deposit, 1 Law Rec. 238
 —Instance where sheriff's fees and
 poundage were excessive, 37 C. P. R..... 183
 —Action against, what plaintiff must
 prove, 3 Law Rec..... 151

SHERIFF'S SALE. In replevin and attach-
ment, 3 Law Rec..... 55

SIDEWALK, CITY ORDINANCE, 1 Law Rec. 256

SHORT CAUSE CALENDAR. See Motion.

	Page
SLANDER AND LIBEL. A complaint in an action for libel alleging that the defendant charged plaintiff with sending anonymous letters calling them obscene is not sufficient, 39 C. P. R.....	83
—Plaintiff must allege facts to show words are libelous, 39 C. P. R.....	83
—Bill of particulars, 1 Law Rec. 73, 97,	169
—Slander in foreign tongue, 1 Law Rec.	245
 SPECIFIC LEGACY. Courts not in favor of, 2 Law Rec.	97
 SPECIFIC PERFORMANCE. When demurrer lies to complaint for, 3 Law Rec.....	10
—See Contracts, 38 C. P. R.	
 STATUTE OF FRAUDS. Necessity of Pleading. See Pleading, 38 C. P. R.	
—Asch v. Heine, 3 Law Rec.....	75
—Of limitations, deed, 1 Law Rec.....	166
—See Accounting, Compulsory, Limitation, Statute of.	
 STATUTES. Relating to procedure are retroactive and prospective in their application (annotated), 38 C. P. R.....	386
 STAY, on appeal from Surrogate's Decree, 1 Law Rec.	144
—On appeal by lower Court, 1 Law Rec.	101
—Motion costs, 2 Law Rec.....	45

	Page
STENOGRAPHER, Fees of, 1 Law Rec.....	85
—Fees on surplus moneys, 1 Law Rec....	131
—Fees for amendments, 1 Law Rec.....	123
—Fees, amount of, special custom, how shown, 2 Law Rec.....	86
—Minutes of. See Amendment.	
 STOCKHOLDERS OF A BUSINESS CORPO-	
RATION, testimony of, 37 C. P. R.....	51
—Liability of, 1 Law Rec.....	29
 STRIKING OUT AMENDED ANSWER, 1	
Law Rec.	45
—Out matter, 1 Law Rec.....	242
—Out defence, 1 Law Rec.....	242
 SUBMISSION OF CONTROVERSY. Sub-	
mitted controversy must involve questions	
of law only, 39 C. P. R.....	273
 SUBPOENA. When may be issued by an attor-	
ney without application to a court or judge,	
37 C. P. R.....	290
—Issued by referee in supplementary proceedings, 2 Law Rec.....	54
—Mandatory, for witness to appear and be examined when issued by foreign court, 2 Law Rec.....	188
—What is necessary for issuance under foreign commission, 2 Law Rec.....	66
—Motion to set aside, 3 Law Rec.....	37
—How must be issued in supplementary proceedings, 3 Law Rec.....	4

	Page
—Duces tecum, in foreign commission, when to issue, 3 Law Rec.....	117
 SUBSTITUTION OF DEFENDANTS, 1 Law Rec.	37
 SUMMARY PROCEEDINGS. Jurisdiction is conferred upon Municipal Court in sum- mary proceedings, 37 C. P. R.....	84
—Appeal, when dismissed, 37 C. P. R....	84
—See Landlord and Tenant."	
—Stay on appeal, 1 Law Rec.....	65
—Defense, 1 Law Rec.....	150
—Injunction, 3 Law Rec.....	128
 SUMMONS AND COMPLAINT. When order is irregular, 37 C. P. R.....	78
—New York City Court, 1 Law Rec.....	73
—Service of foreign corporation, 1 Law Rec.	121
—Order for publication of, 1 Law Rec...	91
—Service on another, 1 Law Rec.....	187
—Amendment of, 1 Law Rec.....	187
—Affidavit of service, 1 Law Rec.....	242
—Date not an essential part of, venue in, when sufficiently stated, 2 Law Rec.....	154
—Defective, how remedied, 2 Law Rec...	148
—Motion to set aside service of, upon ground of fraud, when granted, 2 Law Rec.	148
—Service on a lunatic, 3 Law Rec.....	21
—Service by publication, 3 Law Rec.....	76
—Filing, 3 Law Rec.....	76
—Caption of, different from complaint, 3 Law Rec.	148
—Jurisdictional defect in, 3 Law Rec....	209

	Page
—Omission of venue in, 3 Law Rec.....	209
—Variance between, 3 Law Rec.....	7

SUPPLEMENTARY PROCEEDINGS.	
Disobedience of witness in, 37 C. P. R.....	121
—A subpoena issued in supplementary proceedings must be issued under the hand of the judge or referee before whom the process is pending, 37 C. P. R.....	290
—Can only be discontinued by an order of the court, 38 C. P. R.....	344
—The election of penalties for contempt is in the discretion of the Court, 39 C. P. R.	86
—An order in, is not defective, and the Court does not lose jurisdiction of the proceedings by the resignation of the judge who signed the order, but may be continued before another judge, 39 C. P. R.....	89
—Fine, 1 Law Rec.....	47
—Exempt property, 1 Law Rec.....	76
—Affidavit for, 1 Law Rec.....	90
—Oppressive examination, 1 Law Rec...	101
—Objects of, 1 Law Rec.....	101
—Trust fund, 1 Law Rec.....	129
—For costs, 1 Law Rec.....	200
—Jurisdiction, 1 Law Rec.....	198
—Evasive answers, 1 Law Rec.....	202
—Real estate, 1 Law Rec.....	237
—Earnings cannot be reached after commencement of, 2 Law Rec.....	132
—Judgment debtor's equity in real estate must be sold first, 2 Law Rec.....	8
—Order appointing receiver must be a judge's order and filed in the county clerk's office, 2 Law Rec.....	69
—Payment to sheriff by third party, how protected as against a transferee, 2 Law	

	Page
Rec.	140
—What may be shown. Questions to show fraudulent transfer may be asked, 2 Law Rec.	24
—When a receiver will not be appointed, 2 Law Rec.	45
—Service of order, 2 Law Rec.	54
—Jurisdiction in, 2 Law Rec.	54
—How subpoenas must be issued, 3 Law Rec.	4
—How brought under a Lloyd's policy of fire insurance, 3 Law Rec.	40
—As against a trustee, 3 Law Rec.	78
—Contempt of court, 3 Law Rec.	143
 SURPLUS MONEYS. Costs, 1 Law Rec.	 186
—Moneys, stenographer's fees, 1 Law Rec.	131
—Proceedings, 1 law Rec.	247
 SURETY CO., Undertaking by, 1 Law Rec.	 51
 SURETIES. Upon bond of officer of private corporation not liable for breach happening after expiration of the term limited by bond, 2 Law Rec.	 108
—Action against upon an undertaking on appeal, 3 Law Rec.	93
 SURPLUS PROCEEDINGS. Fees of referee on. Who to pay, 3 Law Rec.	 71

	Page
SURROGATES' COURTS. Jurisdiction of	
Surrogates to appraise property, 37 C. P.	
R.	177
—The Surrogate's Court is given express	
authority to determine the taxability of	
property under the transfer tax law, 37 C.	
P. R.	280
—Power of, in construction of will in ju-	
dicial settlement, 2 Law Rec.	158
—Discovery in, 2 Law Rec.	161
—Jurisdiction of, 2 Law Rec.	210
—Jurisdiction of, in accounting of ex-	
ecutor or administrator of an executor or ad-	
ministrators, 2 Law Rec.	81
—Recitals necessary in execution in, 2	
Law Rec.	81
—Recitals necessary in execution in, 2	
Law Rec.	70
—Power of, in respect to answer, 3 Law	
Rec.	146

T

TAXATION. See Costs.

—Duties of assessors, 1 Law Rec.	91
—Domestic corporation, 1 Law Rec.	33
—Power of court to reduce, 1 Law Rec.	55
—Inability to pay tax, 1 Law Rec.	55
—Of corporation, 1 Law Rec.	55
—Of co-operative loan ass'ns, 1 Law Rec.	48
—Of B. & M. L. Ass'ns, 1 Law Rec.	48
—Of corporation after consolidation, 1	
Law Rec.	41
—Of personal property of corporation, 1	
Law Rec.	91

	Page
TAXES. Reduction of personal, 1 Law Rec....	154
TAX LEASE. As Incumbrance, 1 Law Rec....	186
TEMPORARY ADMINISTRATOR. See Administrator.	
TEMPORARY INJUNCTION. See Injunction.	
TENDER. Complaint to compel assignment of real estate must offer to pay amount still due, 38 C. P. R.....	145
—Plea of, 1 Law Rec.....	132
—Of payment, necessary allegation of complaint against common carrier, 3 Law Rec.	38
TERMS OF SALE. In foreclosure, 3 Law Rec.	194
—Construction of, 3 Law Rec.....	194
TESTAMENTARY CUSTODY OF MINORS, 1 Law Rec.	141
TESTAMENTARY TRUSTEES. Removal of. Voluntary accounting not a matter of defense in, 3 Law Rec.....	136
TESTIMONY. De bene esse, when allowed, 3 Law Rec.	27

	Page
TESTATOR. Personal Property of, 1 Law Rec.	141
THIRD PARTY. Certificate of no Property, 1 Law Rec.	200
TITLE. Cloud upon, 1 Law Rec.....	65
—To office, injunction, 1 Law Rec.....	250
—To office, equity action, 1 Law Rec....	227
—Filing of map not a cloud or encumbrance, 2 Law Rec.....	61
—Marketable purchaser entitled to. Burden rests upon vendee in rejecting title. Defects must be pointed out by vendee, 2 Law Rec	217
—Action to quiet, 3 Law Rec.....	81
—Performance of duties of executrix no estoppel in action to quiet, 3 Law Rec.....	81
TRANSFER TAX LAW. See Surrogates' Courts.	
—Amount, 1 Law Rec.....	259
—Assets within the state, 1 Law Rec.....	23
—Treaty with foreign nations, 1 Law Rec.	25
—Citizens of German Empire, 1 Law Rec.	25
—Non-resident beneficiary, 1 Law Rec..	25
—Non-resident decedent, 1 Law Rec.....	23
—Contingent interest, 1 Law Rec.....	22
—Election of payment, 1 Law Rec.....	22
—Lien upon real estate, 1 Law Rec.....	22
—Leasehold interest, 1 Law Rec.....	83
—Amount of divided estate, 1 Law Rec...	173
—Interest, penalty, 1 Law Rec.....	173
—Without appraisalment, 1 Law Rec....	173

	Page
TRIAL —By demurrer of corporation, 1 Law	
Rec.	199
—Place of. See Venue, 38 C. P. R.	
—Failure to renew motion for non-suit at close of evidence is waiver of right to have case dismissed as matter of law, 38 C. P. R.	136
—Infant loses preference on calendar on failure to appear on return day of motion, 38 C. P. R.....	257
—Order for new trial will not be reversed for failure to state grounds, 38 C. P. R.....	415
—In trial from order granting new trial, Appellate Division will refer to opinion below, 38 C. P. R.....	415
—Motion for new trial will not be denied where new evidence discovered several months ago, but attorney just informed, 38 C. P. R.....	455
—When reference to take depositions for use on motion for new trial will not be granted, 38 C. P. R.....	455
—New York City Court has power to grant new trial on ground of newly discovered evidence, 38 C. P. R.....	271
—Claim to real property may be determined by a jury trial, 38 C. P. R.....	249
—Advancement of cause as provided by Rule 2, 39 C. P. R.....	116
—See "Appeal."	
—By jury, causes of action to referable when right is absolute for trial by jury on one of the causes of action, 2 Law Rec.....	209
—Issues of fact in partition provided for by Rule 31, 3 Law Rec.....	85

TROVER. See Arrest.

Page

TRUST FUNDS. See **Executors and Administrators.**

TRUSTS AND TRUSTEE, accounting by, 37 C.	
P. R.	9
—Extraordinary distributions to stockholders constitute distributions of surplus profits, and must be treated as income, 37 C. P. R.	9
—When may not maintain a sinking fund to meet depreciation in value, 37 C. P. R.	9
—Where a life beneficiary of a trust may also act as one of the trustees, 37 C. P. R. .	9
—See Executors and Administrators.	
—Accumulations from trust created for support and education of beneficiary, and wrongfully withheld by trustees, is subject, under Code Civ. Proc., Sect. 66, to lien of attorney in successful proceeding to compel payment (annotated), 38 C. P. R.	38
—The executrix of a deceased beneficiary has no title to trust fund where beneficiary died before donor, 38 C. P. R.	30
—Income from trust estate necessary for support of beneficiary inalienable and not subject to claims of general creditors, 38 C. P. R.	38
—Void accumulation, 1 Law Rec.	166
—And executor, 1 Law Rec.	21
—Commissions of, 1 Law Rec.	138
—As beneficiary, 1 Law Rec.	153
—Possession under a will, 1 Law Rec.	130
—Resignation of, 1 Law Rec.	147
—Of real and personal property, 1 Law Rec. .	146
—Removal of testamentary, 1 Law Rec. .	144

	Page
—Investment of trust funds, how long permitted to lie in a trust company, 2 Law Rec.	67
—Breach of duty of, when advances and payments disallowed to, 2 Law Rec.	67
—The word "trustee" when notice, 2 Law Rec.	30
—Cannot charge trust estate unless authorized. When personally liable. May expressly charge trust estate, 2 Law Rec.	37
—See Action.	
—What wording constitutes a valid trust.	173
—Construction of in will, 3 Law Rec.	91
—Of express trust—beneficiaries not necessary parties, 3 Law Rec.	110
—Action for damages against for malfeasance in office, 3 Law Rec.	158
—Former judgment in bar, 3 Law Rec.	158
—Merger, 3 Law Rec.	158
—A conveyance of trust property by a trustee to another who at once re-conveys it to the trustee individually, is avoidable at the election of the beneficiaries, 39 C. P. R.	166
—Actual fraud is not presumed, 39 C. P. R.	166
—A defendant using undue influence to procure property from another becomes a trustee, 39 C. P. R.	357
—Who may be joined as parties to recover said property, 39 C. P. R.	357

U

ULTRA VIRES, DEFENCE, 1 Law Rec.	193
--	-----

UNDERTAKING, APPROVAL OF, 1 Law Rec.	51
—By Surety Co., 1 Law Rec.	51

	Page
—Service of, 1 Law Rec.....	29
—On appeal from general term city court to appellate term must in express words provide for payment of original judgment. Such an undertaking only for costs on affirmance insufficient, 2 Law Rec.....	6
—Under Section 559 is not intended to secure general costs, 2 Law Rec.....	1
—On attachment, omission of approval on copy served, 3 Law Rec.....	65

UNINCORPORATED ASSOCIATION. In an action by a suspended member, to compel his reinstatement as a member in good standing, and to prevent its members, by threats or otherwise, from interfering with his working with them, the court may restrain the interference as prayed, 37 C. P. R. 56

UNIONS, PROTECTIVE INJUNCTION, 1
Law Rec. 28

USURY. Party cannot be required to testify to facts which will convict him, 3 Law Rec.... 20

V

VACATING ATTACHMENT. The United Brotherhood of Cloakmakers, 3 Law Rec... 65

VARIANCE. Between summons and complaint, how corrected, 3 Law Rec..... 7

	Page
VENDEE. Action by to annul contract for real estate, 2 Law Rec.....	61
VENUE. The court will not consider the convenience of expert witnesses in deciding a motion for change of place of trial (annotated), 38 C. P. R.....	64
—Plaintiff's poverty will be considered in denying motion for change of, 38 C. P. R....	64
—Action against railroad company for negligent injuries is properly brought in county through which line runs, 38 C. P. R.	64
—Affidavit for change of, for convenience of witnesses held insufficient, 38 C. P. R.....	64
—When in doubt court may deny motion to change venue, 39 C. P. R.....	29
—The court has no authority, on motion to change place of trial, to consider at the instance of plaintiff, the convenience of witnesses, 39 C. P. R.....	338
—When change of place of trial should be granted, 39 C. P. R.....	345
—Change of, residence of corporation, 1 Law Rec.	54
—Change of, affidavit for, 1 Law Rec....	48
—Change of residence of parties, 1 Law Rec..	87
—Public officer, 1 Law Rec.....	136
—Demurrer, 1 Law Rec.....	150
—Affidavit of merits, 1 Law Rec.....	150
—Affidavit to change, 1 Law Rec.	48, 206
VERDIOT. A verdict contrary to the instructions of the court will be set aside, but only the party injuriously affected has the right to complain, 39 C. P. R.....	155
—The Appellate Court is not justified in	

	Page
reversing a judgment for failure to object to the instructions by the court.....	155
—Motion to set aside upon ground that it is excessive	213
—Of jury set aside. See Jury, 2 Law Rec.	213
—Setting aside, 1 Law Rec.....	57
—Misconduct of jury, 1 Law Rec.....	255
VERIFICATION OF ANSWER BY ATTORNEY, 1 Law Rec.....	234
—By joint defendant, 1 Law Rec.....	232
—By one defendant, 1 Law Rec.....	199

VOLUNTARY ACCOUNTING. See Accounting.

VOLUNTARY SETTLEMENT. What is not necessary to allege, in case of, 3 Law Rec... 57

W

WAGES. See Action for, 2 Law Rec.

WAIVER. By executor of, provisions, 37 C. P. R. 86

—Pleading of, 1 Law Rec..... 246

—Of cause improperly on calendar—when, 3 Law Rec..... 3

	Page
WARRANT. Defective, in attachment, may be amended, 2 Law Rec.....	176
—Of attachment. See attachment.	
 WIFE. May act as assignee, 2 Law Rec.....	 76
 WILLS. In an action alleging the invalidity of a will which has been admitted to probate, on the ground of the incapacity of the testator, the plaintiff must sustain the burden of proof to show the testator's incapacity, 37 C. P. R.	274
—Action by plaintiff as executor to obtain a construction of a will and an accounting, where the defendants answered, some claiming the will was valid, and others that it was invalid, 37 C. P. R.....	299
—Burden of proving testamentary incapacity upon one alleging it, 38 C. P. R.....	116
—Evidence held not to show testamentary incapacity, 38 C. P. R.....	116
—Surrogate's failure to transmit to Supreme Court certified copy of probate of will, not justify dismissal of proceedings, 38 C. P. R.....	208
—Before a will probated in another state can be recorded in New York State, all the requirements of this state must be complied with, 39 C. P. R.....	22
—Probate of, by jury, 1 Law Rec.....	161
—Form of, execution, 1 Law Rec.....	170
—Parole evidence, execution of, 1 Law Rec.	170
—Date of, 1 Law Rec.....	171
—Revocation of former, 1 Law Rec.....	169
—Destruction of, 1 Law Rec.....	169

	Page
—Attestation clause, 1 Law Rec.....	174
—Lost or destroyed, proof of, 1 Law Rec.	141
—Copy of lost, 1 Law Rec.....	141
—Denial by subscribing witness, 1 Law Rec.	86
—Construction of trust to receive rents and profits, and suspension of power of alienation, 2 Law Rec.....	78
—Construction of, 2 Law Rec.....	97
—Witness signing at end, 2 Law Rec.....	56
—Construction of trusts, 3 Law Rec.....	91
—Construction of, in partition, 3 Law Rec.	173

WITNESS. A stockholder of a defendant corporation is not competent to testify in an action by the representatives of a decedent concerning personal transactions with the deceased, 37 C. P. R.....		51
—The test of interest in a witness under Section 829 of the Code of Civil Procedure is the old common-law rule of interest, 37 C. P. R.....		51
—A witness in an action or special proceeding cannot be compelled to attend until the statutory fees and mileage are paid, 37 C. P. R.....		121
—Where in an action by an executor to compel an accounting against a servant, the testimony of the defendant was held admissible, 37 C. P. R.....		86
—Competency of testimony of physician, 37 C. P. R.....		165
—Competency of witnesses as to personal transactions with deceased agent, 37 C. P. R.		209
—Competency of witnesses in transactions with deceased person, 37 C. P. R.....		223

	Page
—When interrogatories should be framed in both English and the foreign language, 37 C. P. R.....	247
—Owner of real estate employing attorney instead of real estate agent to negotiate sale is not entitled to claim communications as privileged (annotated), 38 C. P. R.....	90
—The executrix of deceased beneficiary is incompetent under Code Civ. Proc., Sect. 829, to establish title to a trust created by latter's father who died after beneficiary, 38 C. P. R.....	30
—Sect. 829 may be waived by failing to object on proper ground or by calling survivor as witness, 38 C. P. R.....	290
—See, also, Evidence, 38 C. P. R.	
—When in doubt it is proper for the court to deny a motion for change of venue, 39 C. P. R.	29
—Testimony as to transactions with decedent, 39 C. P. R.....	30
—The right to refuse to answer, because it may incriminate a corporation not available, 39 C. P. R.....	33
—A witness cannot claim a privilege from answering when a criminal action is barred, 39 C. P. R.....	33
—When an officer of a corporation is not incompetent as a witness, 39 C. P. R.....	171
—Instance of where a physician is not prohibited from testifying as to patient's statement as to cause of her injury, 39 C. P. R.	247
—See "Discovery." "Venue."	
—Fees, travelling, 1 Law Rec.....	103
—Meaning of, 2 Law Rec.....	61
—See Supplementary Proceedings.	
—Living out of the state, but having a	

	Page
regular place of business in the state, cannot be examined before trial, without proof that he is about to depart from the state or is ill or infirm, 3 Law Rec.....	20
—See Will.	
 WORDS. Addition of “more or less” in a deed, when not significant, 2 Law Rec.....	61
 WRITTEN INSTRUMENT. What testimony admitted to destroy, 2 Law Rec.....	153
 WRIT OF PROHIBITION. When properly is- sued, 37 C. P. R.....	219

INDEX TO ANNOTATION

IN

New York Civil Procedure Reports
VOLUMES 37, 38, 39.

A

ATTORNEY AND CLIENT. Attorney's lien
on trust property, 38 C. P. R..... 45

B

BILL OF PARTICULARS. Right to examine
party when information is obtainable by
Bill of Particulars, 39 C. P. R..... 73

C

COSTS. Additional allowance of, 38 C. P. R.. 470

D

DISCOVERY. Right to examination when in-
formation obtainable by Bill of Particulars,
39 C. P. R..... 73
—When motion to vacate an order for,
granted, 39 C. P. R..... 73

E

	Page
EXAMINATION OF PARTY BEFORE	
TRIAL, 39 C. P. R.	37
—Right to resist application for, 39 C.	
P. R.	37
—General Rule, 39 C. P. R.	37
—Object of, 39 C. P. R.	37
—Right to examination when information	
is obtainable by Bill of Particulars, 39 C.	
P. R.	73
—When motion to vacate an order for,	
granted, 39 C. P. R.	73
—When order for, was upheld, 39 C. P. R.	73
 EXEMPTIONS. Exemption of pension money	
and property purchased therewith, 38 C.	
P. R.	174
—Federal statute, 38 C. P. R.	174
—State statute, 38 C. P. R.	175
—Exemption when pension money trace-	
able, 38 C. P. R.	
A. Property purchased with pension	
money.	
1. In general, 38 C. P. R.	176
2. Personal character of exemption,	
38 C. P. R.	177
3. Effect of increased valuation, 38 C.	
P. R.	179
B. Gifts	179
C. Money.	179
D. Bank deposits	179
—Exemption when identity lost, 38 C.	
P. R.	180
—Subject to charges for support, 38 C.	
P. R.	180
—Taxes, 38 C. P. R.	181

	Page
—Waiver of right of exemption, 38 C. P. R.	184
—Forfeiture of right, 38 C. P. R.	185
—Determination and enforcement of right, 38 C. P. R.	185
—Rights of deserter, 38 C. P. R.	186

I

INJUNCTIONS, PENDENTE LITE, when granted, 37 C. P. R.	65
—When not granted, 37 C. P. R.	69

J

JUDGMENT by confession, what statement of, should contain, 37 C. P. R.	144
—Intendment of Statute, 37 C. P. R.	144

L

LANDLORD AND TENANT. Sufficiency of statement of petitioner's interest or ownership in proceedings to remove tenant, 39 C. P. R.	135
—Statutory requirements, 39 C. P. R.	135
—In general, 39 C. P. R.	136
—Sufficient petitions, 39 C. P. R.	136
—Insufficient petitions, 39 C. P. R.	137
—Amendment, 39 C. P. R.	140

LEAVE TO SUE, 37 C. P. R.	96
--------------------------------	----

	Page
LIMITATION OF ACTIONS. What is sufficient written acknowledgement of debt to take case out of statute of limitations, 38 C. P. R.	500
—Statutory requirements, id.....	500
—General principles, id.....	500
—Conditional acknowledgement, id....	500
—Acknowledgement, to whom made, id..	500
—Signature by party to be charged, id...	503
—Time of acknowledgement, id.....	503
—Acknowledgements, sufficient, id.....	503
—Acknowledgements, insufficient, id....	509

M

MORTGAGE, FORECLOSURE OF. When judgment becomes a lien, 37 C. P. R.....	7
—What may be sold, 37 C. P. R.....	7
—Deficiency, how ascertained, 37 C. P. R.	8
—Leave of Court, 37 C. P. R.....	8

P

PARTIES. How many are “many persons” within Code Civ. Proc., Sect. 448, 38 C. P. R.	483
 PENDENTE LITE. See Injunctions, 37 C. P. R.	 65
 PHYSICIAN, testimony of, under Section 829 of the Code, 37 C. P. R.....	 172

	Page
PLEADING. Amendment of, changing capacity of party, 38 C. P. R.	13
—Statute.	13
—Plaintiffs	
a. Individuals, representatives, etc.	13
b. Corporations, associations	15
—Defendants	
a. Individuals, representatives, etc.	15
b. Corporations, associations	17
—Amendment at Special Term.	20
—Amendment after trial.	21
—Statute of limitations	22
—Costs	22
—Necessity of allegation of double or treble damages, 38 C. P. R.	440
 POOR PERSONS. Right to sue, defend or appeal in representative capacity in forma pauperis, 38 C. P. R.	 235
—Statutory provisions	235
—Executor or administrator	
a. To sue or defend.	235
b. To appeal	238
—Committee of lunatics.	240
—Assignee in bankruptcy.	240
 PROCESS. Attorney's indorsement of office address on legal papers, 38 C. P. R.	 346
—Service of original papers by mail as giving double time for serving amendments thereto, 38 C. P. R.	451
 PRINCIPAL AND AGENT. Communications between, as privileged, 38 C. P. R.	 95

S**Page**

STATUTES. Retroactive effect of statutes regulating procedure in civil cases, 38 C. P. R.	389
—Miscellaneous	389
—New trials and appeals.	392
—Rules of evidence.	393
—Costs	395

V

VENUE. Change of, for convenience of expert witnesses, 38 C. P. R.	66
---	-----------

W

WITNESS. Testimony of physician, 37 C. P. R.	172
—Scope of inquiry, 37 C. P. R.	172
—Construction of Section 829, 37 C. P. R.	172

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No. 5

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The Lawyers' Scrap Book

CONTENTS OF NUMBER 5.

	Page
Scriblerus' Reports	257
Scriblerus Junior's Reports.....	261
Ambulance Chasers	264
Character of an Honest Lawyer.....	266
Aged Prisoner Released from Bastile.....	270
Odd Burial Bequests.....	273
An Interesting Opinion	282
Evidence not Always Testimony.....	284
The Lawyer's Suit	287
Love and Law	288
To — The Lawyer.....	292
The Fowler and the Lark.....	293
Legal Recreations	294
Ten Thousand a Year	310
Blank Pages	319, 320

TO APPEAR IN NO. 6.

When the Scales of Justice Wobble.
 Speech of Samuel Burt.
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Specimen of Scriblerus's Reports.

The exquisite burlesque on the old Reports entitled "Stradling v. Stiles" is often erroneously attributed to Swift and Dr. Arbuthnot; but it seems really to have been the joint composition of Pope and Mr. Fortescue (afterwards in 1736 made a Baron of the Exchequer), and who was, says Sir Walter Scott, "*though a lawyer, a man of great humor, talents, and integrity.*" Swift, Works, vol. xiii, p. 138, ed. Scott.

STRADLING v. STILES.

Le report del case argue en le commen banke devant
touts les justices de le mesme banke, en le quart.
An. du raygne de roy *Jaques* entre *Matthew Stradling*, plant. & *Peter Stiles*, def. en un action prop-
ter certos equos coloratos, *Anglice*, *pyed horses*, post.
per le dit *Matthew* vers le dit *Peter*

SIR JOHN SWALE, of Swale-Hall in Le recital del
Swale-Dale *fast by the River Swale*, kt. Case.
made his last Will and Testament: in which, among other Bequests
was this, viz. Out of the kind love and respect that I
bear unto my much honoured and good friend Mr. *Mat-*
thew Stradling, gent. I do bequeath unto the said
Matthew Stradling, *all my black and white horses.*
The Teastator had six black horses, six whie horses, and six
pyed horses.

The Debate therefore was Whether or no Le point.
the said Matthew Stradling should have
the said pyed horses, by virtue of the said Bequest.

Atkins apprentice *pour le pl. moy* Pour le pl.
semble que le pl. recouvrera.

And first of all it seemeth expedient to consider what is the nature of horses, and also what is the nature of colours; and so the argument will consequently divide itself in a twofold way, that is to say, the formal part, and substantial part. Horses are the substantial part, or thing bequeathed: black and white the formal or descriptive part.

Horse, in a physical sense, doth import a certain quadrupede or four-footed animal, which by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted, and constituted, for the use and need of man. Yea so necessary and conducive was this animal conceived to be to the behoof of the commonweal, that sundry and divers acts of Parliament have from time to time been made in favour of horses.

1st Edw. VI. Makes the transporting of horses out of the kingdom no less a penalty than the forfeiture of £40.

2nd and 3rd Edward VI. Takes from horse-stealers the benefit of their clergy

And the statutes of the 27th and 32nd of Henry VIII. condescend so far as to take care of their very breed: These our wise ancestors prudently foreseeing, that they could not better take care of their own posterity, than by also taking care of that of their horses.

And of so great esteem are horses in the eye of the common law, that when a Knight of the Bath committeth any great and enormous crime, his punishment is to have his spurs chopt off with a cleaver, being, as master Bracton well observeth, unworthy to ride on a horse.

Littleton, Sect. 315, saith, If tenants in common make a lease reserving for rent a horse, they shall have but one assize, because, saith the book, the law will not

suffer a horse to be severed. Another argument of what high estimation the law maketh of an horse.

But as the great difference seemeth not to be so much touching the substantial part, horses, let us proceed to the formal or descriptive part, viz. what horses they are that come within this Bequest.

Colours are commonly of various kinds and different sorts; of which white and black are the two extremes, and consequently comprehend within them all other colours whatsoever.

By a bequest therefore of black and white horses, grey or pyed horses may well pass; for when two extremes, or remotest ends of any thing are devised, the law, by common intendment, will intend whatsoever is contained between them to be devised too.

But the present case is still stronger, coming not only within the intendment, but also the very letter of the words.

By the word black, all the horses that are black are devised; by the word white are devised those that are white; and by the same word, with the conjunction copulative, and, between them. the horses that are black and white, that is to say, pyed, are devised also.

Whatever is black and white is pyed, and whatever is pyed is black and white; ergo, black and white is pyed, and vice versa, pyed is black and white.

If therefore black and white horses are devised, pyed horses shall pass by such devise; but black and white horses are devised; ergo, the pl. shall have the pyed horses.

Catlyne Serjeant: moy semble al' contrary, the plaintiff shall not have the pyed horses by intendment; for if by the devise of black and white horses, not only black and white horses, but horses of any colour between these two extremes may pass, then not only pyed and grey

Pour le Defend.

horses, but also red and bay horses would pass likewise, which would be absurd, and against reason. *And this is another strong argument in law, Nihil, quod est contra rationem est licitum; for reason is the life of the law, nay the common law is nothing but reason; which is to be understood of artificial perfection and reason gotten by long study, and not of man's natural reason; for nemo nascitur artifex; and legal reason est summa ratio; and therefore if all the reason that is dispersed into so many different heads, were united into one, he could not make such a law as the law of England; because by many successions of ages it has been fixed and refixed by grave and learned men; so that the old rule may be verified in it, Neminem oportet esse legibus sapientiores*

As therefore pyed horses do not come within the intendment of the bequest, so neither do they within the letter of the words.

A pyed horse is not a white horse; neither is a pyed a black horse; how then can pyed horses come under the words of black and white horses?

Besides, where custom hath adapted a certain determinate name to any one thing, in all devises, feoffments and grants, that certain name shall be made use of, and no uncertain circumlocutory descriptions shall be allowed; for certainty is the father of right and the mother of justice.

Le rest del argument jeo ne pouvois oyer, car jeo fui disturb en mon place.

Le court fuit longement en doubt' de c'est matter; et apres grand deliberation eu,

Judgment fuit donne pour le pl. nisa causa.

Motion in arrest of judgment, that the pyed horses were mares; and thereupon an inspection was prayed.

Et sur ceo le court advisare vult.

Scriblerus Junior's Reports.

MR. EDITOR,

I am requested by a young friend to present to you the enclosed attempt at *burlesque*, for insertion in the Scrap Book. If you think well of it, you will flatter its author by publishing a first essay. Perhaps you will, with your usual clemency, pass on the offender against our republican prejudices, a mild sentence. With sincere esteem and high respect,

I remain,
Your friend and servt.

J. D.

Specimen of the Reports of Scriblerus, jun. which he intends to offer to the American Public, at the very low price of six dollars a volume. The London edition (if there were any) would sell for twelve dollars, in boards.

Commonwealth, } Habeas Corpus
v. } *sum causa, &c.*
 } to C. Hunt, to
Oochon Hunt. } remove Grunter,
 } a hog, from his
 } custody.

Statement Grunter, a hog, whose
del Case. sounding name

Is yet but little known
to Fame;

Being per force in prison cast.
(A place but little to his taste)
To Couns'ler Sharp makes known
his case;

And begs he'll try all legal ways,
To get him out—Sharp, after por-
ing

O'er books, with store of legal
lore in;

Resolves to issue habeas corpus.
As suiting best the pris'ner's pur-
pose;

On which being brought before
the Court,

Sharp makes a speech (proust re-
port.)

L argument May't please the Court
del counsel —I think the case
pour le pri- Plain as the snout in
sonier. Grunter's face;

The prisoner hath been
oppress'd,

And prays his wrongs may be re-
dress'd;

He's been depriv'd of that great
right,

For which we all are bound to
fight;

Fighter I mean of Liberty!
pour la li- which all

berte. Allow to be most nat-
ural;

And not to man alone,
but to

All sorts of creatures, high and
low,

What right, by nature's law, have
I,

To hold in durance e'en a fly?—
Le cheval The horse who grinds
ausufranke his master's tan

qu' i' hom- By nature, is as free
me. as man.

But proud oppression
walks the earth,

And crushes merit, virtue, worth;
The rich oppress the poor—The

strong

But use their strength to sanction
wrong.

But as the law of nature now
Is obsolete, I'll try to show,

That even by the laws in force,
The prisoner has a right, of

course,
To be discharg'd, on giving bail,

From all the horrors of a jail;
A place by tyrants first invented;

Who to oppress the people meant
it.

Le jail tres A place which every
anti-repub- democrat

lican. Instinctively must
tremble at.

The constitution, fourteenth section,
Article ninth, gives this direction;
All prisoners shall be let from jail,
On giving good sufficient bail;
Unless for capital offences,
Et cætera; and on no pretences
Shall th' act of habeas corpus be
Suspended—Now, Sir, are not we
Entitled under the provision.
To claim the prisoner's dismissal?
With confidence I leave the case,
To argue further would disgrace
Your honours' judgment, and
would be
But idle waste of time in me.

*Pour le pro-Attorney General in
secution.* reply.
Sir—I contend, the person can't
Be set at large—The idle rant
Us'd by his counsel, plainly shews
us,
He cant on legal grounds oppose
us;
The constitution on its face
Does not embrace the present
case;
'Twas made for citizens alone;
And as the counsel has not shown
His client to be one—of course
His argument's of little force.
But, Sir, the prisoner is a vagrant,
And has committed the most flagrant
Abuses, outrages and torts;
Such as are found in no reports,
Such as I never met, at least,
From the first year-book to fifth
East;
He has scar'd horses, beaux and
women,
Splash'd breeches, stockings,
gowns and trimming;
Not fearing God, and shunning
evil:
But instigated by the devil,
He hath at divers times upset
Women in gutters foul and wet;
Then, rubb'd against, and scrap'd,
and scratch'd,

In ways that never yet were
match'd:
Divers good people he's and she's,
"To their damage, and against the
peace,
Et cætera," and I think enough
here
(Being pro'd) appears to make
him suffer;
Besides the may'r, by proclamation,
Warn'd him against perambulation;
To which he paid such small regard,
That none will say his case is
hard.

Counsellor Sharp.
Uncore, pour Although I thought
le prisonier. the question plain,
I must address the court again,
To note some observation which
Fell from my brother in his
speech:
He says the hog's a vagrant—I
Th' assertion utterly deny:
He has an obvious way to live,
A way which any may perceive.
His lawful and known trade Sir,
is
Useful and necessary, viz.
Le Cochon A Scavenger—and,
(*anglice* a Sir, the offence
hog) *estivoico-* Of fright'ning children's a pretence;
rum urbis And nothing more
Ourator (*an-* to sanction wrong,
glice a sea- *venger.*) Which weak men oft
must bear from
strong;
An observation, which, 'tis meet,
"Iterum qu' iterum" to repeat:
Why are not criers of pepperpot
Sweeps, watchmen, rag-men, and
what not,
For their vile noises laid by th'
heels,
No hog that ever grunts or
squeals,
I take upon myself to say,
E'er made a viler noise than they.
Why are the Apollonian crew,
With sounds Apollo never knew,
"With kettle-drum, whose sullen
dub

"Sounds like the hooping of a tub;"
With clarionets so hoarse and old,
You'd swear the night air'd giv'n
them cold;
Suffer'd each night through town
to stroll,
And set the dogs to yelp and
howl!

I hardly notice the base slur
Cast on the injur'd prisoner,
To wit, "That he not fearing evil"
Was "instigated by the devil."
There never was but one case
where

It plainly could be made t' appear
That swine were instigated by
the dev'l, and then they gave a
cry,

And ran full, tilt into the sea.
Therefore the present race can't
be

Related to them. But admit
They had not drown'd themselves,
sir, yet

The devil would only vested be
In them for life, and not in fee!
But further, sir, we'll clearly
show,

That we have wandered to and
fro,

Prescription Time immemorial
time where- (that's to say)
of the me- No hog remembers
memory of now the day;

At which they did not
freely run

About each street and
hogs runneth lane in town;

not to the Without let, stoppage,
contrary. or vexation.

Hindrance, or other molestation;

And Blackstone (seventeenth
chapter) says,
We may prescribe for rights of
ways.

We ask for justice, and we hope
Chancery of- We've ask'd it in the
fiocinae justi- proper shop.
tiae Blkst.

Per Curiam.

We think there's not the smallest
speck of doubt

About the case—Grunter cannot
get out;

He's not a citizen—Prescribe he
can't,

Prescriptions always presuppose a
grant.*

And to a grant three things are
always wanted;

Grantor, grantee, and subject to
be granted.

The grantor must be capable to
give,

The grantee must be able to re-
ceive.

Hogs are not persons capable, of
course,

No grant to them can be of any
force.

But, if the prisoner thinks he can
stand by it,

Let him bring *false imprison-*
ment, and try it.

Reporter's The cause was never
note. tried;

Death, with a butch-
er's knife,

To put an end to strife,
Seiz'd Grunter by the throat,

(that is) he died.

* Butler.

* Blackstone.

Port Folio

An Irish crier being ordered to clear the court did so
by this announcement: "Now, then, all ye *blackguards*
that isn't *lawyers*, must lave the coort."

Ambulance Chasers.

For hiring ambulance chasers a prosperous lawyer has been suspended for a year. The Appellate Division gives notice that the next lawyer who pays out money to get negligence cases will be disbarred. The technical legal name for this is "champerty."

The Civil Code says that it is a misdemeanor for any lawyer to give a valuable consideration as an inducement for law business brought to him. This is violated whenever a lawyer hires runners to bring in business or arranges to pay a commission on business brought in.

The enforcement of the provision of the law against ambulance chasers should be the beginning of a complete reform in the whole system of negligence law and practice, of which the ambulance chaser is not a cause, but a result.

Tens of thousands of people are injured every year in this city. The street cars, elevated and subway kill a few hundred and hurt a few thousand more. Every bridge and every large building brings business to the undertaker and the hospital. Every factory has its accidents.

Modern industry and transportation seem to have for an inevitable accompaniment death or maiming from accidents.

Naturally the majority of people hurt are working people, who have no regular lawyer and no money with which to pay retainers. Hence if these injured people are to collect by legal process for their injury they must employ some lawyer on a contingent fee. Certain lawyers specialize this line of business, and to secure trade divide their fees with policemen, canvassers, hospital attendants and others who would bring them business. It is this practice which the Appellate Division condemns.

Why should a man who has been injured in the course of his daily work be compelled to bring suit? As it is, employers insure against accidents to their employees.

Transportation companies maintain at great cost negligence departments of their own. Hundreds of lawyers, investigators, detectives, clerks, subpoena servers, insurance solicitors are receiving millions of dollars a year which had better go to the injured parties. Of the aggregate payments on the accident account, legal bureaus, casualty companies and ambulance chasers get fully three-fourths. The injured people get less than one-fourth.

How much better would it be if all the accident cases were automatic in their adjustment.

A man who takes out an accident insurance policy receives his payments automatically without either party hiring a lawyer or going to court. The old legal distinctions of master and servant, contributory negligence, assumed risk and the like should be abolished. All industrial or transportation injuries should be paid for according to the age and earning capacity of the injured one and the extent of the injury.

This would cost little if anything more than the present system. It would relieve the calendars of the courts. It would elevate the practices of the bar. Better than all, it would give the money to the people who need it most. —*N. Y. World.*

An attorney in New York city, has been suspended from practice for a year because he had been found guilty of ambulance chasing, having paid runners a commission to bring personal-injury cases to his office. And the court intimated that in future the punishment for this offense would be disbarment rather than suspension.

The law, it is true, aids the vigilant, and not the slothful. It is possible, nevertheless, even in such a case, to rise too early.

Character of an Honest Lawyer.

Justitiæ cultor, rigidi servator Honesti, in commune bonus.

[I know not the name of the author of the ensuing description, but from internal evidence, suspect it to be L'Estrange, from the quaintness of the antitheses, and from an occasional sprinkling of the dialect of Alsatia. In many passages, however, the ingenuity of the author, rising above cant and affectation, has very elegantly, as well as justly, described a lawyer of skill, eloquence, and probity. Our partiality to the profession and knowledge of many an advocate urge us to declare that the character is not uncommon in America. A day, in the term of many of our lawyers, which is unmarked by some deed of justice or humanity, is a *dies non* in his calendar. Industry is his pledge for prosecution, and Skill is the subscribing witness to all his instruments.]

An honest lawyer is the life-guard of our fortunes, the best collateral security for an estate: a trusty pilot, to steer one through the dangerous (and oftentimes inevitable) ocean of contention: a true priest of justice, that neither sacrifices to fraud nor covetousness; and in this outdoes those of a higher function; that he can make people honest that are sermon-proof.—He is an infallible anatomist of *Meum* and *Tuum*, that will presently search a cause to the quick, and find out the peccant humour, the little lurking cheat, though masked in never so fair pretences: one that practices law, so as not to forget the gospel, but always wears a conscience as well as a gown; he weighs the cause more than gold; and if that will not bear the touch, in a generous scorn puts back the fee.

Though he knows all the criticisms of his faculty, and the nice snapperadoes of practice, yet he never uses them, unless in a defensive way, to countermine the plots of knavery; for he affects not the devilish skill of out-baffling

right, nor aims at the shameful glory of making a bad cause good; but with equal contempt hates the wolf's study, and the dog's eloquence; and disdains to grow great by crimes, or build himself a fortune on the spoil of the oppressed, or the ruin of the widow and orphan. He has more reverence for his profession, than to debauch it to unrighteous purposes; and had rather be dumb than suffer his tongue to pimp for injustice, or club his parts to bolster up a cheat with the legerdmain of lawcraft.

He is not faced like *Janus*, to take a retaining fee from the plaintiff, and afterwards a back-handed bribe from the defendant: nor so double tongued, that one may purchase his pleading, and the other at the same, or a larger price, his silence; but when he undertakes a business, he espouses it in earnest—and does not follow a cause, but manages it. A mollifying letter from the adversary's potent friend, a noble treat, or the remora of a lusty present from the great, have no influence to make him slacken his proceedings: for he is so zealous for his client's interest, that you may sooner divorce the sun from the ecliptic, than warp him from his integrity; yet still is his patron only *usque ad aras* (as far as just); for if once he finds the business smells rank, *St. Mark's* treasure, or the mines of *Potosi*, are too small a fee to engage him one step further.

As his profession is honourable, so his education has been liberal and ingenious; far different from that of some jilting pettifoggers, and purse-milking law-drivers, whose breeding, like a cuckoo's, is in the nest of another trade, where they learn wrangling and knavery in their own causes, to spoil those of other men, and, with sweetened ingredients of mechanic fraud, compound themselves (though simple enough) fit instruments for villany. But his greener years were seasoned with literature, and he can give better proofs of his university learning, than his reckoning up the colleges, and boasting his name in the buttery book: he understands logic (the method of right

reasoning), and rhetoric (the art of persuasion), is well seen in history (the free school of prudence), and no stranger to the ethics and politics of the ancients. He is skilled in other languages besides *declaration Latin* and *Norman gibberish*; he read *Plato* and *Tully* before he saw either *Lyttelton* or the *Statute Book*, and, grounded in the principles of nature and customs of nations, came (*lotis manibus*) to the study of our common municipal law, which he found to be *multorum annorum opus*, a task that requires all the nerves of industry; and therefore employed his time at the Inns of Court, better than in hunting after new fashions, starting fresh mistresses, haunting the playhouses, or acquiring the other little town accomplishments, which render their admirers fine men in the opinion of fools, but egregious fops in the judgment of the wise.

In his study, he traffics not only with the infantry of epitomes, abridgments, and diminutive collectors in *decimo-sexto*, but draws his knowledge from the original springs, digesting the whole body of the law in a laborious and regular method, but especially aims to be well versed in the practice of every court, and rightly to understand the art of good pleading, as knowing them to be the most useful to unravel the knotty intrigues of the cause, and reduce it to an issue; yet hates to pester the court with *circuities*, *negative pregnantis*, *departures*, and multiplied *inconveniences*.

He never goes about with feigned allegations, to cast a mist before the eyes of justice, that she may mistake her road, and assign the child to the wrong mother: endeavors not to pack a jury by his interest to the under sheriff; nor to balk an evidence with a multitude of sudden ensnaring interrogatories; nor maintains any correspondence with the knights of Alsatia, or Ram-alley vouchers. He can prosecute a suit in equity, without seeking to create a *whirlpool*, where one order shall beget another, and the poor client be swung round (like a cat before execution)

from decree to rehearsing, from report to exception, and *vice-versa*, till his fortunes are shipwrecked, and himself drowned, for want of white and yellow earth to wade through on. He never studies delays, to the ruin of a family, for the lucre of ten groats; nor, by drilling quirks, spins out a suit more lasting than buff, depending a whole revolution of Saturn, and entailed on the third and fourth generation. He does not play the empiric with his client, and put him on the rack to make him bleed more freely, casting him into a swoon, with frights of a judgment and then reviving him again with a cordial writ of error, or the dear elixir of an injunction, to keep the brangle alive as long as there are any vital spirits in the pouch. He can suffer his neighbors to live quiet about him, without perpetual alarms of actions and indictments, or conjuring up dormant titles to every commodious seat, and making land fall five years purchase, merely for lying within ten miles of him.

He delights to be an arbitrator, not an incendiary, and has *beatus pacificus* is oftener in his mouth than *currat lex*. He never wheedles any into endless suits for trifles, nor animates them to undo themselves and others for damage feasant, or insignificant trespasses *pedibus ambulando*; but (as *Telephus's* sword was the best cure for the wounds it made) advises people to compose their assaults and slanders over the same ale that begot them; nor does he, in weightier cases, extort unreasonable fees; for whatever the foul-chap'd rabble may suggest, a lawyer's profession is not mercenary; the money given him is only an honorary gratuity for his advice and trouble, or a grateful acknowledgment of our obligations for his well-intended endeavors; and the old emblem of the brambles tearing off the sheep's fleece that ran to it for shelter in a storm, can have no reflection upon him, whose brains is as active, and his tongue as volatile, for a pennyless pauper, as when ciled with the *aurum potabile* of a dozen guineas.

In a word, whilst he lives, he is the delight of the court, the ornament of the bar, the glory of his profession, the patron of innocency, the upholder of right, the scourge of oppression, the terror of deceit, and the oracle of his country; and when death calls him to the bar of heaven, by a *habeas corpus cum causis*, he finds his judge his advocate, nonsuits the devil, obtains a liberte from all his infirmities, and continues still one of the long robe in glory:

The courtier's pomp, or glorious scar
Got by a soldier in the war,
Can hold no weight with his brave mind,
Who studies to preserve mankind.

—*Port Folio.*

The Aged Prisoner Released from the Bastile.

Nowhere else on earth, perhaps, has human misery, by human means, been rendered so lasting, so complete, or so remediless, as in that despotic prison, the Bastile. This the following case may suffice to evince; the particulars of which are translated from that elegant and energetic writer, Mr. Mercier.

The heinous offence which merited an imprisonment surpassing torture, and rendering death a blessing, was no more than some unguarded expressions implying disrespect towards the late Gallic monarch, Louis Fifteenth.

Upon the accession of Louis Sixteenth to the throne, the ministers then in office, moved by humanity, began their administration with an ace of clemency and justice. They inspected the registers of the Bastile, and set many prisoners at liberty.

Among those, there was an old man who had groaned in confinement for forty-seven years, between four thick and cold stone walls. Hardened by adversity, which strengthens both the mind and constitution, when they are not

overpowered by it, he had resisted the horrors of his long imprisonment with an invincible and manly spirit. His locks white, thin, and scattered, had almost acquired the rigidity of iron, whilst his body, environed so long a time by a coffin of stone, had borrowed from it a firm and compact habit. The narrow door of his tomb, turning upon its grating hinges, opened not as usual, by halves, and an unknown voice announced his liberty, and bade him depart.

Believing this to be a dream, he hesitated; but at length rose up and walked forth with trembling steps, amazed at the space he traversed. The stairs of the prison, the halls, the court seemed to him vast, immense, and almost without bounds. He stopped from time to time and gazed around like a bewildered traveler. His vision was with difficulty reconciled to the clear light of day. He contemplated the heavens as a new object. His eyes remained fixed, and he could not even weep. Stupified with the newly acquired power of changing his position, his limbs, like his tongue, refused, in spite of his efforts, to perform this office. At length he got through the formidable gate. When he felt the motion of the carriage which was prepared to transport him to his former habitation, he screamed out, and uttered some inarticulate sounds; and as he could not bear this new movement, he was obliged to descend. Supported by a benevolent arm, he sought out the street where he had formerly resided; he found it, but no trace of his house remained; one of the public edifices occupied the spot where it had stood. He now saw nothing which brought to his recollection, either that particular quarter, the city itself, or the objects with which he was formerly acquainted. In vain were his looks directed to all the objects around him; he could discover nothing of which he had the smallest remembrance. Terrified, he stopped and fetched a deep sigh. To him what did it import, that the city was peopled with living creatures. None of them were alive to him; he was unknown to all the world, and

he knew nobody; and whilst he wept, he regretted his dungeon. At the name of the Bastile, which he then often pronounced and even claimed as an asylum, and the sight of his clothes which marked his former age, the crowd gathered around him; curiosity, blended with pity, excited their attention. The most aged asked him many questions, but had no remembrance of the circumstances which he recapitulated.

At length, accident brought to his way ancient domestic, now a superannuated porter, who, confined to his lodge for fifteen years, had barely sufficient strength to open the gate. Even he did not know the master he had served, but informed him that grief and misfortune had brought his wife to the grave thirty years before; that his children were gone abroad to distant climes, and that of all his relations and friends none now remained. This recital was made with the indifference which people discover for events long passed and almost forgotten. The miserable man groaned and groaned alone. The crowd around offering only unknown features to his view, made him feel the excess of his calamities even more than he would have done in the dreadful solitude which he had left.

Overcome with sorrow, he presented himself before the minister, to whose humanity he owed that liberty which was now a burden to him. Bowing down, he said, "Restore me again to that prison from which you have taken me. I can not survive the loss of my nearest relations; of my friends; and in one word, of a whole generation. Is it possible in the same moment to be informed of this universal destruction and not to wish for death? This general mortality, which to others comes slowly and by degrees, has to me been instantaneous, the operation of a moment. Whilst secluded from society I lived with myself only; but here I can neither live with myself; nor with this new race, to whom my anguish and despair appear only as a dream."

The minister was melted; he caused the old domestic to attend this unfortunate person, as only he could talk to him of his family. This discourse was the single consolation which he received, for he shunned intercourse with the new race, born since he had been exiled from the world; and he passed his time in the midst of Paris in the same solitude as he had done whilst confined in a dungeon for almost half a century. But the chagrin and mortification of meeting no person who could say to him, "We were formerly known to each other," soon put an end to his existence.

Odd Burial Bequests.

PROVISION OF CERTAIN WILLS STARTLING.—DISPOSITION OF BODY IN UNUSUAL WAYS.—BITTERNESS PROMPTS SOME PECULIAR TESTAMENTS.

By Mary W. Mount.

"Very few men are really known until they are dead," lawyers say. They point to strange and erratic wills and burial requests as proof of this assertion.

What is known in China as "ancestor worship" and in Philadelphia as "due respect for one's family" found an illustration recently in Long Island, when, at her request, the oil portraits of her father, mother, brother, two sisters and herself were buried in the grave with the body of Miss Sarah E. Maurice. The burial took place in Mount Olivet Cemetery, Maspeth, in the family plot. Miss Maurice was ninety-three years old, and remembered her father entertaining DeWitt Clinton on his splendid estate.

Another recent burial of an unusual nature was that of the heart of Rev. Dr. Wendell Prime, which was brought

from Switzerland and placed at his instance, in the grave of his wife, at Cedar Hill Cemetery, in Newburg. Mrs. Prime died thirty-two years ago in the course of Dr. Prime's long pastorate of the Union Presbyterian Church of Newburg. It had for generations been the custom of the Prime family to request post-mortem examinations that would insure death before burial.

Fidelity to a lost cause prompted the burial request of an ex-Confederate soldier, who desired that his ashes should be sealed in a casket and dropped into the sea exactly over the spot where the fight took place between the Monitor and the Merrimac.

A not dissimilar provision was found in the will of a German who died in Pittsburg in 1887. According to this provision, his body was cremated, sent to the German Consul at New York, and by him delivered to the captain of the steamship Elbe, who, when the ship was in midocean, requested a passenger to attire himself in nautical costume and climb to the topmast, carrying the urn of ashes, which from that point the passenger scattered to the four winds of heaven.

A foreigner who died in New York desired to be cremated, but neglected to provide for the disposition of his ashes. His wife accordingly received them in a tomato can, guiltless of a lid, and placed the can on a mantel shelf. Here one day a church visitor found it in the process of housecleaning.

"What's this?" she inquired, holding out the can to the housewife, who was ill.

"That's my husband!"

"Hus—!" The ashes hung in the balance. When she had recovered from the shock of handling canned husband the young woman urged Christian burial for the ashes. Her hearer was obdurate. The visitor then went out and purchased a coffee canister into which she induced the widow to empty the contents of the tomato can. "Think," she

argued, "how dreadful it would be if one of the children were to upset the can and you had to sweep up your husband in a dust pan!"

Clamping down the canister lid, the visitor set it back on the mantel shelf.

"Now you won't mistake and use this for coffee?" she said solemnly.

"Sure not. He not taste the same," indignantly responded the relict.

It was not an Irishman, but Guiseppi Sanducci, who, in a will, made at Auburn before his execution by electricity for murder, bequeathed \$10 to be used in obtaining a pardon for himself.

A great many persons bequeath large sums to be expended in masses intended to shorten their residence in purgatory; a great many leave explicit directions for the conduct of their funeral obsequies and the style of tombstone desired, but one does not hear of such requests as that of a rich young man, in a Southern city, who wanted to have his body dressed in regulation garments and seated in a chair just inside the drawing-room door which guests would enter to attend his funeral. None forgot the shock of finding him thus waiting apparently to greet them.

Dr. Wagner took a grewsome revenge upon relatives who, as he asserted, had neglected him in his lifetime, by bequeathing an arm and hand, each, to two brothers and other portions of his anatomy to the rest. For the dismemberment of his body he left \$1,000.

Patriotism found strange expression in the will of Solomon Sanborn, of Medford, Mass., who bequeathed his body to Professor Agassiz and Dr. Oliver Wendell Holmes to be by them prepared in the most expert manner known to anatomical art placed in the anatomical museum of Harvard College. Two drumheads were to be made of his skin. Alexander Pope's "Universal Prayer" was to be inscribed upon one and the Declaration of Independence

upon the other. Thus adorned they were to be presented to the testator's "distinguished friend, the drummer of Cohasset," upon condition that annually, on June 17, at sunrise, the drummer should beat "on the drumheads at the foot of Bunker Hill the spirit stirring strains of 'Yankee Doodle.'"

Sometimes legatees refuse to receive bequests. Such was the case when Dr. Ellerby, who died in London in 1827, left his heart, lungs and brains, severally, to three men "in order that they may preserve them from decomposition." No record exists as to whether Dr. Ellerby carried out his threat to "come and torment these gentlemen" if they failed to comply with his behests.

Jeremy Bentham left his body to a hospital, desiring that his skeleton should be articulated and his head preserved entire. Thus mounted he requested that his body should preside at meetings of the hospital directors. Although the skeleton is in the hospital museum, a wax head had to be substituted as preservation of the original was unsuccessful.

A certain Mr. Luke, of Rotheringham, must have been fond of children, for he desired in his will that a penny be given every child who attended his funeral. Seven hundred were present, as well as many women, for to every poor woman in the parish had been bequeathed a shilling, and to the bell ringers half a guinea, each, to "strike off one peal of grand bobs" as his body was being lowered into earth. Seven of the oldest navvies were to have a guinea each for "puddling him up" in his grave, and to an old woman "who had for sixteen years tucked him up in his bed" he left one guinea. He also left an endowment whereby forty dozen penny loaves were to be thrown down from the parish church steeple at noon every Christmas Day "forever."

Love of the stage has led many a man and woman to strange actions. It led John Reed, gaslighter of the Philadelphia Walnut Street Theatre, to will this: "My head to

be separated from my body, duly marcerated and prepared, then to be employed to represent the skull of Yorick in the play of Hamlet."

The late Countess of Loudoun, half-sister of the late Marquis of Hastings, willed no less strangely: "After my death I direct my right hand to be cut off and buried in Donnington Park, at the bend of the hill toward the Trent, with this motto over it, 'I byde my tyme.'" The monument standing at the spot designated bears witness to how faithfully the testator's husband carried out her wishes.

Tears were evidently abhorred by W. D. Foster, a London theatrical man, who requested that no woman should be present at his funeral, and that, if his wife survived him, his body should be cremated, on the theory that ashes do not lie as closely as dust to the fountain of tears.

A Frenchman, embittered toward his people and country, willed his money to the poor of London, and his body to be thrown into the sea a mile from the English shore. Another, evidently a good liver, desired that every day a new cooking recipe should be pasted upon his tomb.

John Underwood had a fancy for the classics, even in the grave, and willed that his body be buried in a green coffin, with a copy of the writings of Horace beneath his head, and a volume of Milton under his feet. His right hand was to be clasped about a Greek testament, and his left around a small copy of Horace. Six friends were desired to follow him to the grave, to eschew any sign of mourning in their dress, and to sing a verse of the twentieth ode of the second book of Horace. This done, they were to "take a cheerful glass and think no more of John Underwood."

Taylor's "Medical Jurisprudence" reports the case of Morgan vs. Boys, in which the testator desired his body to be converted into fiddlestrings, smelling salts and portions vitrified into lenses for optical purposes. His property was devised to a stranger, and he attached to his will the follow-

ing explanation of it: "The world may think this to be done in a spirit of singularity or whim, but I have a mortal aversion to funeral pomp and I wish my body to be converted into purposes useful to mankind." The next of kin to the deceased were unable to break this will.

Even more severely dealt with was the next of kin—a son—of Philip Thicknesse, to whom was bequeathed the right hand of his father, who willed that it should be cut off and sent to the son "in hopes that such a sight may remind him of his duty to God, after having so long abandoned the duty he owed to a father, who once affectionately loved him."

Vanity or sentiment usually mark directions for attiring a testator for burial, but the will of George Appleby expresses neither in this request: "My body—after being dressed in flannel waistcoat instead of a shirt, an old surtout coat and breeches, without lining or pockets, an old pair of stockings (shoes I should want none, having done with walking), and a worsted wig, if one can be got—I desire may be buried in as plain a manner as possible, wherever my widow shall think proper."

It looks as if John Baskerville, of Birmingham, desired to cure (or aggravate) somebody's fear of "ha'nts" by closing his will thus: "My further will and pleasure is, and I here declare, that the devise of all my goods and chattels, as above, is upon the express condition that my wife, in concert with my executors, do cause my body to be buried in a conical building, in my own premises, heretofore used as a mill, which I have lately raised higher, and painted, and in a vault which I have prepared for it. This doubtless may appear a whim; perhaps it is so; but it is a **whim** for many years resolved on, as I have a hearty contempt for all superstition, etc."

The late Lord Newborough held definite ideas as to **when** his departed spirit should be worthy to dwell with **saints**, for he gave, in his will, explicit directions for the **exhuming**

of his body after a certain period and its reburial in Bardsey Island. No fewer than 20,000 "saints" are reputed to have been buried upon this island in the northern part of Cardigan Bay.

Henry Eberle had an eye to future worldly appearances when he devised an estate of \$25,000 to be expended in the erection and care of a monument over his body. He left nothing to the imagination as to the kind of monument desired or the manner in which it was to be maintained.

Numbers of persons exhibit fear of being buried alive by making especial kinds of requests in their wills, of which the following are examples: John Blount Price, of Islington, directed that four days after his death two skilful surgeons should receive \$25 each to perform such operations on his body as would kill him in case he were yet alive. The Viscount de Carros Lima directed that his body should be watched by his heirs until decomposition set in.

A Vienna millionaire seems to have been totally in the dark as to his future state, for he willed that both the interior of his coffin and the vault in which it would lie should be illuminated by electricity.

Families do not always carry out the behests of the dead. Relatives of a notorious infidel who lived in a lonely gorge of the Blue Ridge Mountains, in North Carolina, placed a large white cross on the summit of one of the highest peaks of the Blue Mountains on the spot wherein the man had requested to be buried. Instead of the mounment he had directed to be placed there, inscribed with an epitaph reviling Christianity, the body was buried in a Christian cemetery.

Desire for cremation is often ignored. As late as 1855 this manner of disposing of bodies was apparently not practised in England, as witness the will of William Kensett: "Believing in the impolicy of interring the dead amidst the living, and as an example to others I give my body, four days after death, to the directors of the Imperial Gas Com-

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pany, London, to be placed in one of their retorts and consumed to ashes, and that they be paid ten pounds by my executors for the trouble this act will impose upon them for so doing. Should a defence of fanaticism and superstition prevent their granting my request, then my executors must submit to have my remains buried, in the plainest manner possible, in my family grave in St. John's Wood Cemetery, to assist in poisoning the living in that neighborhood."

In these, and in many another instance, do men seek to reach out beyond the barriers of death to care for or dispose of those bodies which "fade away suddenly like the grass."—*New York Tribune*.

The will of William Henry Maximilian Grevel, President of the Continental Export Company and Director in Fleischmann's Model Bakery, Incorporated, who lived at 85 East Tenth Street and died at Atlantic Highlands, N. J., on Aug. 17, was filed yesterday for probate. It proved to be an unusual document, both as to contents and length, the copy covering thirty typewritten pages. There was nothing in the petition which showed the value of the estate, and the attorneys who filed it refused any information on this point.

The testator directs the executors to pay outright to his adopted daughter, Ada Ida Jeanette Grevel Acker, \$3,000 within one year, and a friend, Adele Heuel, gets \$500, with instructions that a sum be invested sufficient to pay her \$25 a week so long as she remains unmarried. His ward, Erna Ada Bening, if she is married by Jan. 19, 1913, is to receive \$500 outright and the income of \$2,500. Mrs. Minnie Kock gets \$15 a month during her lifetime. His wife, Wilhelmina Grevel, is to have the income of the residuary of the personal estate during her life. It is then to go to the daughter and subsequently to her son, Grevel Edward Wilfred Acker, "providing he shall lead a respect-

able life, indulge in no excesses, and abstain absolutely from paper cigarettes."

One of the remarkable clauses of the will, which leads the document, is in regard to the disposal of his body. Mr. Grevel directed that the services be brief and under Masonic auspices. He desired that his body be incased in a coffin "even now provided by me and taken in an undertaker's wagon, not a hearse, to the nearest crematory for incineration, there to be met by two close friends (not in any way connected with my family) volunteering the favor, who shall see that my coffin is demolished and shall remain in sight of the retort to which my body is committed until my ashes are taken therefrom, placed into the inner receptacle of the combination, likewise even now provided by me, and turned over to them for delivery to my beloved wife or whomsoever she may designate; or, in event of her prior death, they may be sealed by attending friends and temporarily left in the crypt of the crematory.

"Then as soon as practicable, but before any disposition of my property is made, the receptacle originally containing my ashes shall be placed in the outer receptacle, also even now provided by me, surrounded by photographs of those dearest my heart and persons at time of my death, not forgetting those of my departed parents, Aunt Hareck and my late father-in-law, Dr. John H. Herman, as well as my own, properly inscribed, and shall be secured and tightly soldered thereunto, the inscription on said outer receptacle then to be completed in the presence of a trusted friend volunteering the act of kindness, and the whole, either with or without ceremony, deposited within the marble urn in the granite monument on Lot 82 of Lutheran Cemetery, Middle Village, L. I."

In regard to his horses, which he left to his wife, the testator directed that "the horses shall be driven only by my wife, her coachman, Ada Ida Jeanette Acker, (the daughter), and our friend, Adele Heuel, and if found being

driven by any other person, no matter who he or she may be, on affidavit of any reputable residents of Monmouth County, N. J., they shall revert to my estate and be sold to best advantage under contract that they shall not be driven in said county, and the proceeds of the sale be turned over to the Overseer of the Poor of Monmouth County, for the benefit of those under his care."

Willy Hermann Grevel Graff, his nephew, and Arthur L. Gehlert are named as executors.—*New York Times*.

An Interesting Opinion.

GANN V. ZETTLER.

(Court of Appeals of Georgia. Feb. 11, 1908.)

BROKERS—RIGHT TO COMMISSIONS.

"No man can serve two masters; for either he will hate the one and love the other, or else he will hold to the one and despise the other."

Error from City Court of Atlanta; H. M. Reid. Judge. R. M. Gann against M. L. Zettler. Judgment for defendant, and plaintiff brings error. Affirmed.

C. B. Rosser, Jr., for plaintiff in error.

A. C. Brown, for defendant in error.

POWELL, J. It is recorded of Him "who spake as never man spoke" that, "seeing the multitudes, he went up into a mountain, and when he was set his disciples came unto him; and he opened his mouth and taught them, saying: * * * 'No man can serve two masters; for either he will hate the one and love the other, or else he will hold to the one and despise the other.'" So, also, is our

law. Civ. Code 1895, §§ 3010, 3011, 3014, 3018. Whoso, having undertaken the service of his master, counsels with another and agrees also to serve him in those same things wherewith he has been trusted, can not claim the reward promised by his master unless he makes it plain that he has not acted privily, but that his master was consenting thereto. *Sessions v. Payne*, 113 Ga. 955, 39 S. E. 325; *Ramspeck v. Patillo*, 104 Ga. 772, 30 S. E. 962, 42 L. R. A. 197, 69 Am. St. Rep. 197; *Red Cypress Lumber Co. v. Perry*, 118 Ga. 876, 45 S. E. 674; *Whitley v. James*, 121 Ga. 521, 49 S. E. 600; *Reed v. Aubrey*, 91 Ga. 435, 17 S. E. 1022, 44 Am. St. Rep. 49; *Todd v. German American Insurance Co.*, 3 Ga. App.—, 59 S. E. 94.

In this case a woman, owning a house, placed it with an agent, instructing him to sell it for her for \$1,500. A man, desiring to buy the house, but not for cash, hired this agent to become also his agent to buy it of the woman through other means, making known to him that he was willing to give in exchange for the woman's house a piece of land which he owned and \$1,200 in notes. The agent, not telling the woman that he had become the agent of the man, got from her an agreement to take, in exchange for her house, the man's land and notes for \$1,000; and she therewith also consented that, if the agent could get the man to give more than this sum, he should have it for his pay. However, before the trade was ended, the woman having obtained knowledge that the man had already offered to give more than the land and the \$1,000, which had not been told her, put the agent aside and dealt directly with the man, to her better advantage. The agent, learning of these things, sued her for \$200; but the judge gave judgment in her favor.

Judgment affirmed.

Mr. Justice Maule once said that nominal damages "are in effect only a *peg to hang costs on*."

Evidence Not Always Testimony.

Evidence has often been termed the eye of the law, and has been too generally considered to be that which regulates the decisions of all courts of justice, that are conducted with impartiality. But the term evidence, so applied, is a misnomer, since, from the very nature of things, evidence rarely, if ever, either can or does appear in a court of justice. We do not mean to quibble about words, nor to split distinctions where there are no differences. The eye of the law, however, happens unfortunately to be composed of something very different from evidence; for evidence seldom deceives, nor is itself deceived. But the law is compelled to make use of an eye that is far more imperfect; an eye that sometimes sees too little, and sometimes too much; this eye is *testimony*. If a man comes into a court of justice covered with wounds and with bruises, I admit that the whole court has evidence before it that the man has been beaten and mangled; but the question of law, is, *by whom* has he been so beaten or mangled? and this is matter of *testimony*, not of *evidence*. For evidence is the impression made upon a man's *own* mind, through his *own* senses; but *testimony* is the impression that he may *choose* that his *tongue* should make upon the senses of others; and here we have a very serious distinction, not without a difference. Thus, for instance, if I see A murdered by B, I am satisfied of that fact, and this is *evidence*; but I may think fit to swear that he was murdered by C and then the court are bound to be satisfied of *that fact*, and this is *testimony*.

I have said that evidence seldom deceives, or is deceived. In fact its very etymology *evideo*, would seem to indicate a something clearly perceived and ascertained, through the medium of the senses. And herein evidence, I must repeat, differs most materially from testimony,

which, as its derivation also clearly shows us, can be nothing more than the deposition of a witness, which deposition may be *true* or *false*, according to the will of him who testifies. But *no man can will* that his own mind should receive one impression, while his senses give him another. *But any man may will* that his tongue should communicate a different impression to the senses of others, from that which he has received from his own. And, hence, it happens that a sagacious and penetrating judge has often got a very high kind of moral conviction; more satisfactory, perhaps, and conclusive than the unsupported, though positive oath of any one individual whosever; I mean a connected chain of circumstances, all pointing one way, and leading the mind to one object; a chain by which truth has often been pumped up from her well, notwithstanding all the efforts of *testimony*, to keep her at the bottom of it. Thus, in the case of Donnellan, who was executed for poisoning Sir Theodosius Boughton, with distilled laurel water, some circumstances were elicited that would have weighed more strongly in the judgment of reflecting minds, than any positive but single affidavit which might have been brought to contradict them. A still that had been recently used, was discovered on the premises. Donnellan was so bad a chymist, that on being asked for what purposes he had procured this machine, he replied, "that he had used it to *make lime-water!* to kill the fleas; not knowing that lime-water can only be made by saturating water with lime, and that a still never was, and never can be applied to such a purpose. But, in his library, there happened to be a single number of the Philosophical Transactions, and of this single number the leaves had been cut only in one place, and this place happened to contain an account of the mode of making laurel-water by distillation. But the greatest discretion and shrewdness is necessary wherever circumstances point one way, and testimony another, since probable falsehood will always be more readily accredited

than improbable truth; and it unfortunately happens that there are occasions, where the strongest circumstances have misled, as in that famous case of the murdered farmer, recorded by Judge Hale. I have heard the late Daines Barrington mention a very extraordinary circumstance, of a similar kind, that took place, if I remember right, at Oxford, but it was prior even to his time, and I have forgotten the names of the parties. As the story may be new to some of my readers, I shall relate it as nearly as my memory serves. A country gentleman was travelling from Berkshire, on horseback, to London; he had a friend with him, and a servant, and they supped at the inn, and ordered beds for the night. At supper, his friend happened to observe to the gentleman, that it would be adviseable to start early on the next morning, as it would be dangerous to go over Hounslow Heath after sunset, as he had so much property about him. This conversation was overheard by the landlord, who assisted the gentlemen's servant in waiting at the table. About the middle of the night, the gentleman's companion thought he heard a noise in his friend's apartment, but it passed over, and he thought no more of it. Some little time afterwards, he was again disturbed by a similar noise, when he determined on entering the apartment. He did so, and the first object he saw, was the landlord with a lantern in his hand, and with a countenance of the greatest consternation, standing over the still bleeding, and murdered body of his friend. On a further search, it appeared that the gentleman had been robbed of all his property, and a knife was discovered on the bed, which was proved to be the property of the landlord. He was tried, condemned, and executed, and what was very remarkable, he admitted that he most justly deserved to suffer, although he persisted to the last moment, in his entire innocence of the crime for which he was condemned. This mysterious affair was not explained, until some years afterwards, when the gentleman's servant, on his deathbed,

confessed that *he* was the man who had robbed and murdered his master. It would seem that *both* the landlord and the servant had nearly at the same time made up their minds to commit this dreadful deed, but without communicating their intentions to each other; and that the one had anticipated the other by a few minutes. The consternation visible in the countenance of the landlord, his confused and embarrassed account of his intrusion into the chamber, and of the cause that brought him there at such an hour, were all natural consequences of that alarm produced by finding a fellow-creature whom he had sallied forth at the dead of the night to destroy, weltering in blood, and already murdered to his hands; and the knife had involuntarily dropped from his arm, uplifted to strike, but unstrung, as it were, and paralyzed by the terror excited by so unexpected and horrifying a discovery.—*Colton*.

The Lawyer's Suit.

AN—“For the Lack of Gold.”

By John G. Saxe.

O WHY, lady, why, when I come to your side,
 Repulse your poor suitor with such haughty pride?
 That you'll never wed with a Lawyer you swear—
 But why so averse to a Lawyer, my dear?

Can it be, that because I have thought and have read,
 Till my heart to the world and its pleasures is dead?
 Pshaw! my heart may be hard, but then it is clear
 Your triumph's the greater to melt it, my dear!

Can it be that because my eyes have grown dim,
 And my color is wan, and my body is slim?

Pshaw! the husk of the almond as rough does appear—
But what do you think of the kernel, my dear?

Would you wed with a Fop full of apish grimace,
Whose antics would call all the blood to your face?
'Take me, from confusion you're sure to be clear,
For a Lawyer's ne'er troubled with blushes, my dear!

Would you wed with a Merchant, who'd curse and who'd
bann
'Cause he's plagued by his conscience for cheating a man?
Take me, and be sure that my conscience is clear,
For a Lawyer's ne'er troubled with conscience, my dear!

Would you wed with a Soldier with brain made of fuel,
Who, defending his honor, is killed in a duel?
Take me, and such danger you've no need to fear,
For my honor is not worth defending, my dear!

Come, wed with a Lawyer! you needn't fear strife;
For since I have borne with the courts all my life,
That the Devil can't ruffle my temper, I'll swear—
And I hardly think you could do either, my dear!

Love and Law.

A LEGEND OF BOSTON.

By John G. Saxe.

JACK NEWMAN was in love; a common case
With boys just verging upon manhood's prime,
When every damsel with a pretty face
Seems some bright creature from a purer clime,
Sent by the gods to bless a country town—
A pink-checked angel in a muslin gown.

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